OF THE ANTIENT LAWES OF *great Britaine.*

Seruato Ius, metue Mortalis Deum.

George Saltern.



LONDON
Printed for *Iohn Iaggard*, and are to bee ſolde at his Shop in Fleeteſtreete, at the Signe of the hand and Starre. 1605.

De Antiquis Britanniæ Legibus.

Cap. 1.

IN all actions, in euerie election, in euery counſell and deliberation, it is to bee held for a certaine and vndoubted principle, that, Onely thinges Godly, juſt, & neceſſarie are to be done, & that with due inuocation of Diuine aſſiſtance, without the which nothing can be done. So the firſt conſideration ought to bee of the end, the ſecond of the meanes, the third of the effectuall working power, which cannot be hindred, which is onely the ſpirit of God all ſufficient. By this wee Gen. 17. 1 may ſee how that ground is to be vnderſtood, which ſome haue taken, namely that in al innouations there ought to be vrgent neceſsitie, or euident vtilitie. A ground which if it had bin vſed onely as it was firſt propoſed by a *Pagan*, *Vlpianus*.

I would ſay that it were altogether vnperfect & defectiue, ſeeing the conſideration of Godlines & juſtice, is quite omitted; but ſeeing the ſame is now taken and preſſed by Chriſtians, I will deſire them to admit a Chriſtian expoſition, & to ſay that Religion, Piety & Iuſtice, doe carry the waight of neceſsity and vtility, and whatſoeuer is Godly and juſt, the ſame is neceſſarie & proffitable, according to the ſaying of the A-
1. Tim. 4. poſtle: Godlyneſſe is proffitable to all things & hath the promiſes of this life and of the life to come. And againe whatſoeuer is not Godly & juſt, the ſame is not to be done whatſoeuer neceſsitie or vtilitie may ſeeme to bee in it: as it is
Mat. 10. 37 writtẽ. He that loueth Sonne or daughter more thẽ me, is not worthy of me. And ſo that groũd is much more perfect & abſolute which out of a *Pagan*, is thus expreſſed:

Seruato ius et metue mortalis Deum.

How Godly and juſt a thing it is to eſtabliſh a perfect Vnitie in theſe Kingdomes, for the confirmation of an euerlaſting peace betweene them, and by conſequence thereof, for the increaſe and propagation of Gods truth and his Goſpell, in a former treatiſe I haue ſhewed according to the beſt of my vnderſtanding.

Now

Now I take in hand to ſpeake of our auncient Lawes, and God is the beginning and end of my worke. The thing it ſelfe is no leſſe fit and neceſſarie for this time to be knowne, then obſcure and difficult to expound. For whether we conſider our Statutes enacted ſince the *Norman*, wee ſhall finde them grounded vpon moſte juſt and prudent jntentions: or the remnants of our Actes made by the *Saxons*, we ſhal ſee them ful of Godly & deuout admonitions, or the ſecret footeſteps of the auncient Britiſh conſtitutions, appering yet in the bodie of our common Lawes, the principles thereof will appeare to be the verie Lawes of the eternal God, written in the two immortal tables of nature & Scripture. The reaſon heereof ſurbordinate vnder the gracious ordinance of the Almightye, was either the bleſſed diſpoſitiõ of our Princes, whoſe matches for Godlineſſe and vertue no countrie but the Cradle of our Sauiour could euer affoord (as our eyes now doe witnes,) or the natiue inclination of our people moſt apt to be led by piety and deuotion, as the greateſt number of examples doe prooue: or the religious & happie counſell of *Elutherius* to *Lucius* King of Brittain, who hauing publikely receaued in his

kingdome the faith & Gospel of our Lord, and studying to amend his Lawes then vnperfect, sent vnto the said *Elutherus* for a Coppy of the *Romane* Lawes. The Christian Bishop made such an answere to the first Christian King, as betweene two such persons ought to passe; As the most high God answereth his most faithful seruant. Make al thinges according to the patterne &c. So writeth this good Bishop. *Petistis a nobis leges Romanas et Cæsaris vobis transmitti, quibus in regno Britanniæ vti voluistis: Leges Romanas et Cæsaris semper reprobare possumus, Legem Dei nequaquam. Suscepistis enim nuper miseratione diuina, in regno Britanniæ Legem et fidem Christi. Habetis penes vos in Regno vtramque paginam. Ex illis dei gratia, per consilium regni vestri sume legem, et per illam Dei patientia, vestrum rege Britanniæ regnũ. Vicarius vero Dei estis in Regno iuxta Prophetam regem.*

Exo. 25.40

Inter Leges Sti. Edwardi Lãb. Archaion. Fox ex Antiquo codice See also Monemuthens. Bed. Li. 1. Pontic. vir.

Psal. 24. *Domini est terra, et plenitudo eius, orbis terrarum et vniuersi qui inhabitant in eo. Et rursum iuxta prophetam Regem, Dilexisti iustitiam, et odisti iniquitatem, Propterea vnxit te Deus tuus oleo Lætitiæ, præ consortibus tuis. Et rursus iuxta*

Psal. 45.

Psal. 72 *prophetã regem. Deus iudiciũ tuũ regi da, et iustitiam tuã filio regis. Non enim Iudiciũ neque iustiti-*

am

dm Cæsaris Filij enim Regis gentes Christiane et populi regni sunt qui sub vestra protectione, et pace et regno degunt et consistunt iuxta Euangelium, quemadmodum gallina congregat pullos sub alis, &c. Gentes vero regni, pulli vestri sunt, quos diuisos debetis in vnum ad concordiam, et pacem, et ad fidem, et ad legem Christi, et ad sanctam ecclesiam congregare. &c. This counsell I say might bee the reason, and by all likelyhood was the reason that our common lawes are so much grounded vppon the lawe of God, which I am the rather mooued to beleeue, for that I see our learned Iudge Mr. *Bracton* so oftentimes inculcating the sentence of this Epistle, and namely that *Rex est vicarius Dei*, and deriuing such excellent conclusions from it, as of Godlines in the Prince and of dutie and obedience in the subiect &c. And the effect heereof hath been that which is written in the Scriptures: *Verbum Dei manet in æternum.* These lawes saith the learned Sir *Iohn Fortescue* haue been in the times of the *Brittaines*, *Romaines*, *Saxons*, *Danes* and *Normanes*, and if they were not the best Lawes, some of those Kings (especially the *Romans*) would haue changed them. Of these thinges therfore I haue to speake matters farre aboue the mediocritie

Lib. 1. C. 2.

Lib. 3. C. 9

Fortescue de laudibus Legum.

of my knowledge: but that I may the better do it, I humbly beseech thee O true light of eternitie! to whome all ages and times are present, to reuiue the memorie of thy glory established by thee in our auncient Lawes, lighten my vnderstanding, confirme my judgement, & leade mee in the wayes of truth and justice, seeing that without thee neither any man can doe, nor I can speake any thing.

Cap. 2.

ORder of learning, and of the said Epistle doth require, that before I enter into the discourse of our auncient Britaine lawes, I speake somewhat concerning the *Romane* Lawes, that it may appeare that neither the reuerend *Elutherius* was deceiued in judgement, nor the Godly *Lucius* in his choise, nor the learned *Fortescue* in his testimony: but that our said auncient Lawes were, indeed, as well as by the *Romanes* owne confession (in that they did not change them) better then their owne. I speake as a Christian, for asmuch as *Brittain* receaued the Lawes of Christ before it knew the gouernmẽt of *Rome*; but because I wold be loath to offend,

offend, I will remit the reader that is desirous to know, what may be said of the Authors & composers of the first *Romane* Lawes: to St. *Augustin* and of these now extant to *VVesembechius Rivallius, Procopius*, and others: And for the principles and groundes, I will referre them to consider the particulars of the twelue tables yet in parte remayning, and to measure and examine the rules of the Institutes by the wordes of the Authors, out of which they seeme to bee taken: *Aristotle, Tully, Isidorus. &c.* and both by the Scriptures: a woorke worthy the vacation of a learned man. But for the Lawes of *Brittaine*, my principall intention before I come to speak of them, I will intreate a little leaue to speake somewhat first of lawe in generall, and secondly of the auncient inhabitantes of this Ile. For by knowing what they were, wee shall the better knowe their Lawes and manners.

Aug. de Ciuit. Dei. L. 3
Wesembech præfat in Isag.
Riuall. in hist. Iur. de Iustiniano.

Cap. 3.

THe Lawe by *Aristotle* is called a couenant of the societie of men. By *Tully* the reason and minde of God discerning just and vniust: If we joyne these two and call it the couenant made

Polit. 1. De Leg.

made by God with the societie of men, ac-
Ex. 34. 27 & 20. v. 5. 6 Deut. 5. 2 cording to his owne reason, discerning just & vniust: it agreeth with the words of *Moses*, and will be as I take it a perfect definition.

The end as *Tully* saith is manifest, *Ad salu-*
De Leg. 2. *tem ciuium, ciuitat nque incolũnitatem vitamque omnium quietam et beatam.* Agreeing also with *Ioses*, it *Salus et Incolumitas et Beatitudo*, bee taken for all the blessing of this life, and the life to come. Lawes are called Diuine or Humane. The deuine Lawes are those which God immediately made, first written in nature, secondlye described in the ten commaundements, & the Scriptures. Humane Lawes are Lawes deriued out of the diuine Lawes by applycation of the general commaundements, First to the principal parties *viz.* to God, to the common estate,
Anson. and to priuate men according to the diuision of the twelue Tables: secondlye to particular circumstances of Persons, thinges, actions, times, places, Penalties and such like, as the Institutes are deuided.

Heerehence followeth a conclusion obserued also by *Tully*; that if a Law be made contayning any thing contrary to the Lawe of God, it is not to be called a Lawe, (though all the world in a

iovnt

ioynt Parlamẽt confirme it. For neither is it deriued out of the general precepts, nor partaketh of the common definition, ſeeing it is not a couenant of God, but a confederacy againſt God.

The property and effect of the Lawe is firſt to make a diſtinction of juſt from vniuſt. Secondlye to commaund and forbid. Thirdlye to punniſh and rewarde. Theſe thinges are performed originallye and gennerally by the Lawe of God, and ſecondarily and particularly by the Lawe of men. The quallities of a true Lawe are reckoned vp by *Iſidorus* and others. *Eſſe debet Lex Honeſta, Iuſta, poſſibilis, ſecundum naturam et conſuetudinem, Loco et tempori conueniens, neceſſaria vel vtilis manifeſta. &c.* A Lawe muſt bee honeſt, juſt, poſſible, agreeable to nature and cuſtome, to time and place, neceſſarie or profitable and manifeſt: & of this proceedeth another ground alſo, *jus nemini violare vel ignorare Licet. Item lex obligat ad ſcientiam, ad obedientiam, ad pœnam.* The Lawe bindeth to knowledge, obedience, & puniſhment: no man may breake it, no man may be ignorant of it, and that which Iſidore, ſaith, when Lawes are made, no Man may judge of them but according to them. The exact per-

Decret. Part. 1 Weſemb.

5 Ethic. formance of the Lawe is called Iuſtice, the moderation of the Lawe vppon conſideration of circumſtances, is called equitie, the contraries to the law are jniurie, jniuſtice, jniquity, wrong, force, fraud & ſuch like. Whatſoeuer is ſaid of the Law of God abſolutely, may proportionally be applyed to the Lawe of men. The end of the Lawe of God is al happines. That happines which is the end of Humane Lawes, conſiſteth Pſal. 72. 85. chieflie in the conſeruation of Religion, Peace, and Iuſtice, all which thinges are comprehended by St. *Auguſtin*, vnder the name of peace, De Cinitate Dei. li. 19 which alſo he maketh the finall end of the Citie of God. The matters which the Lawes doe handle, are chiefly perſons, things, places, times, contracts, offences and actions. In this Iland, perſons appointed ſpecially for the procuration of Religion, are the Archbiſhops, Biſhops & Miniſters; for the preſeruation of Peace are the Nobilitie, Sheriffes, and Iuſtices of peace. For the adminiſtration of Iuſtice, the Iudges, profeſſors and Officers of Lawe. And the King hath from God ſupreame authoritie ouer all, according to the ſentence, *Rex eſt Vicarius Dei.*

Other diſtinctions there be of Perſons, but it is not my intention to ſpeake of euery difference,

rence, but onely ſo much as may ſerue to giue light to the Diſcourſe intended.

Things alſo haue many diuiſions, whereof I meane to touch but one, which is that ſome may paſſe by courſe of inheritance, as Landes and tenements: ſome cannot, as Chattelles.

Of places, ſome haue ſacred priuiledge, as Temples, repreſenting God by his woord. The Kinges preſence and Iudiciall Courtes, repreſenting God in power and Iuſtice; others are ordinarie and common, and of them ſome are publique: as Markettes, Wayes: Some priuate, as Houſes, Shoppes. &c. Times are likewiſe diuided into ſacred and common, the Day, the night, and ſuch like diuiſions. Contracts haue manifold Diſtinctions, which ſee in *Bracton.* *Bracto. L.3*

Crimes, are either againſt Religion, Peace, or Iuſtice, and againe are conſidered as publike offences, & ſo *Rex pro pace ſequi debet*, in which *Bracton.* all the Pleas of the Crowne are contayned, or as ſome particular perſon is intereſſed, who is to ſue accordingly. Againe, they may be purſued ciuilly or criminally. Laſtly, actions are diſtinguiſhed for the moſte parte according to the things which they demaund, or the perſons plaintifes or defendants, or the Courts wherin,

or the times whē. &c. In actions, are theſe principall partes: Sūmons, or Citations, triall, Iudgement, and execution: Theſe points as fitter to be ſought in other places, & as to learned men, and as my ſelfe not halfe learned, I doe briefely paſſe ouer, haſting to ſpeake ſomewhat of the Inhabitants of this Lande, and ſo to that which I intend.

Cap. 4.

AMongſt the ſeueral opinions that haue bin conceiued cōcerning the firſt poſſeſſors of this Iſle, I cannot ſee any more conſonant to diuinity, to reaſon, and the teſtimonies of beſt approoued Antiquaries, then that which maintaineth the Nations of *Brittaine* to be deſcended of *Gomer* the Sonne of *Iaphet*, whoſe children, after the diuiſion of tongues, at *Babel*, ſpred throughout al *Europe*, & ſo repleniſhed this Iſland, *De tractu Armoricano (vt fertur) in Britanniā aduecti* ſaith the venerable *Bede*. And to ſay that any multitude of *Chams* poſterity arriued heere to inhabit, is in my vnderſtanding cōtrary to the grounds aforeſaid. For firſt there is no probabilitie to maintaine that the Children or families, deſcended of one ſonne: as of

Bed. Hiſt. Lib. 1.

Iaphet,

Iaphet, were mixed with the Children of the o-
ther. For then how ſhould the accompliſhmẽt
of the Prophecye be obſerued, which God pro-
nõced before by the mouth of *Noah*? that *Cha-* Gen. 9.
naan ſhould be a ſeruant both to *Sem* & *Iaphet*,
and that *Iaphet* ſhould dwel in the tents of *Sem*:
Secondly, it is euident, that almightie God gaue
to euery famely of the Sonnes of *Noah* his ſeue-
rall Language, & his ſeuerall Countrey, by theſe
reaſons: *viz.* by the ſuruay of all Nations the
Sonnes of *Iaphet*, *Madai* the *Medes*; *Iauan* the
Ionians; *Tubal* the *Iberians*; *Meſchech*, the *Mo-*
ſcouites; *Gomer*, the *Cymbri*; *Aſhkenas*, the *Tuiſ-*
cones. The Sonnes of *Cham*, *Cush*, the *Aethiopi-*
ans, *Miſraim* the *Aegiptians*, *Canaan* the *Cana-*
anites: the Sonnes of *Sem*, *Ashur*, *Elã*, *Apachshad*,
Lud and *Aram*, euerie one had his language and
his Countrie, and as I take it the contrarie can-
not be ſhewed.

And this is confirmed by the expreſſe words of
Moſes, or rather of God himſelfe, the trueſt
Author: where hauing named, firſt the Sonnes Gen. 10.
of *Iaphet* by themſelues, *Gomer* and the reſt, hee
addeth this concluſiõ; Of theſe, were the Iles of
the *Gentles* diuided, in their Landes euery man
after his tongue, and after their families, in their

 nations.

nations. So hauing reckoned the Children of *Cham*, euerie one by name, hee addeth the like
Vers. 20. conclusion: These are (saith hee) the Sonnes of *Cham*, according to their families, according to their tongues in their Countries, & in their nations. The like conclusion he maketh after the ennumeration of the Sonnes of *Sem*. And the
Gene. 12 same point is prooued by the Historie of *Abraham*, where he is commaunded to goe from his Country, from his Kindred, & from his Fathers
Deut. 32. 8. house: and againe by the Song of *Moses*, & diuers other places of Scripture. So as it is apparant by the wordes of the Scripture, that howsoeuer the languages were confounded, yet the
Vid. August Lib. 16. de Ciuit. Dei. seuerall kindreds, and families descended from the Sonnes of *Noah*, were not confounded together; but that euerie familie had his particular tongue and country, and were seuered from other Families. And it is also likely, that howsoeuer their speeches were confounded, and their families deuided: yet the Sonnes of *Iaphet* had amongst thẽselues more intelligence one of an others language, then they had of the languages vsed by the natiõs descended of *Cham*, or *Sem*. For wee see the *Assirians*, *Persians*, *Syrians*, and *Hebrewes* descended of *Sem*, had more simili-

tude

tude of ſpeech, and writing among themſelues, then they had with any the nations of *Europe*.

And ſo the *Aegiptians*, *Aethiopians*, *Libians*, & other deſcended of *Cham*; which vicinityes (as I may call it) of ſpeech, being greater in thoſe original times, then now it is, cauſed thoſe families that had beſt intelligence one with another to ſorte themſelues together, in places of neerer neighbour-hood, And thereof it came, that the Children of *Sem* remained in *Aſia*, The children of *Cham* went into *Africa*, & the children of *Iaphet* went northward into *Europa*; as wee ſee the *Moſcouits*, the *Thracians*, *Ionians* and *Iberians*, the Sonnes of *Iapbet* to be round about vs. Of all which premiſſes reſteth this concluſion, that all the inhabitants of *Britaine* are deſcended from ſome one of *Iaphets* Children.

Other teſtimonies of the Scriptures incline the ſame way, for *Gomer* and *Togarmath* his ſonne are called the ſides of the North; & learned men doe agree, that the auncient *Kimbri* or *Gomeri*, the Sonnes of *Gomer* did reigne farre & wide in one neighbor Countries; and the auncient *Brittaines* doe yet call their countrie *Cimbri*. So that in Diuinitie and reaſon we cannot choſe but acknowledge our ſelues to be branches

Ezech. 38.

Camden.

Sir John Priſe.

ches of the ſame ſtocke, namelye the *Cimbri* of *Gomer*, & likewiſe the *Saxons* & *Danes* of *Asbkenas*, and the *Scots*, If *Iberi* of *Tuball*, and al of *Iaphet*: But if the *Scotti* wil confeſſe themſelues to be *Getæ*, according to the opiniõ of the moſt learned Mr. *Camden*, then are they deſcended from *Gether*, the Sonne of *Sem*, as *Melanchton* ſheweth. And to theſe opinions the reaſons and authorities of beſt antiquaries doe concur, which he that deſireth to ſee, may peruſe them in Mr. *Camden* and others, neither will I preiudicate any mans opinion, (though to me ſomewhat improbable) in deriuing vs from the *Troianes*, ſo as hee deriue the *Troianes* thẽſelues, from *Ashkenas* which will come to the ſame effect. Taking therefore the former opinion, or howſoeuer it be, the inhabitants of this Iſle being by all mens confeſsion, a moſt auncient nation of the poſteritie of *Iaphet*, and who (as *Gildas* ſeemeth to ſay) had at the firſt the knowledge of God; it ſtandeth with reaſon, & with beſt warrant of authoritie, to thinke they were gouerned by ſuch Lawes, and inſtitutions deriued from the Principles of the firſt age, that is from the Lawe of God written in nature, as moſt of the auncient nations did imbrace, & very

Beda. Li. 1. & Mel. Ch. 1. Camden. Polidor vir. Lib. 1. Sir Iohn Priſe.

Gildas cited by Polidor.

verye neere to thoſe which the Godly *Sem*, in whoſe tents God perſwadeth *Iaphet* to cõtinue, deliuered to his Children; of which I intend to perticulate ſome heerafter.

Cap. 5.

I Haue ſpoken of the Lawe in generall, and of the firſt inhabitants of this Land; and I haue to ſpeake ſomwhat in generall of the Lawes inſtituted by our Chriſtian King *Lucius* vpon receit of *Elutherius* Letters, meaning to deſcend in to perticularities, by eaſie paces and degrees.

But in ſetting down things of ſo ancient time, whereof remaine but fewe Hiſtoryes, through the rage of the *Romanes* and other ſauadge idolaters, the ſcourges of this kingdom, in her godly infancye; Leſt I ſhould ſeeme to ſpeake too much of mine owne braine; I would intreat euery prudent, ſober, & Chriſtian Politician, firſt to examine the contents, and ſentences of that godly Epiſtle, & ſecondly to conſider his owne minde, and to vnfolde his ſecret vnderſtanding, what he himſelfe would haue done, & what he would think fit to doe, if he had bene then King *Lucius*, or of counſell with him, hauing receiued ſuch a Letter as before is ſet downe?

Touching the Epiſtle it ſelfe, it contayneth an anſwer to the demaund of King *Lucius*. The demaund was, to haue the Lawes of *Rome* and *Cæſar*. The anſwer conſiſteth of two partes; a Rejection, We may (ſaith he) alwaies reproue the Lawes of *Rome* & *Cæſar*, but not the Lawes of God. And an exhortatiõ, to take a Lawe for his Kingdome, out of the Lawe of God. This he inforceth, with diuers reaſons and ſentences of Scripture, which with an admirable conſent, do euery one proue each other, and euery one the ſeuerall partes of the anſwer.

Firſt you are Gods Vicar, therfore you muſt rule by Gods Law & not by *Cæſars*. The earth is the Lords, therfore it muſt be ruled by the lawes of the Lord, and not by *Cæſars*. God hath annoynted you to be King, *Cæſar* hath not annoynted you, therefore &c. O God, giue thy judgements to the King, therefore not *Cæſars*: what then would you doe, being a godly Chriſtian, vpon the reading of ſuch a Letter? Let our moſt Chriſtian King St. *Edward* giue vs counſel;

Lãb. Arch. who in his Lawes, taking the words of this Letter for his ground-worke, ſaith thus:

Rex autem, quia vicarius ſummi regis eſt, ad hoc eſt conſtitutus, vt regnum terrenum, & populum

Domini,

Domini, & ſuper omnia ſanctã tueatur Eccleſiam eius, & regat, & ab iniurioſis defendat, & maleficos ab ea euellat. And a little after, he ſheweth how this may be done: *Debet vero Rex Deum timere ſuper omnia, & diligere, & mandata eius per totum Regnũ ſuum ſeruare. Debet etiam, ſanctam Eccleſiam regni ſui, cum omni integritate, & libertate iuxta conſtitutiones patrum, & predeceſſorum ſeruare, fouere, manutenere, regere, & contra inimicos defendere: ita vt Deus præ cæteris honoretur, & præ oculis ſemper habeatur. Debet etiam bonas eges, & conſuetu dines approbatas erigere, prauas autem delere omnes, & a regno deponere. Debet iudicium rectum in regno facere, & iuſtitiã per conſilium procerum regni ſui tenere.* Thus ſaith St. Edward, but if the counſell of ſo excellent a King doe not reſolue you, yet in the mouth of two witneſſes let euery word be confirmed, and peruſe the wordes of a moſt excellent Counſellor and Lawyer, I ſay *Bracton, lib. 3. cap. 9.* who there ſpeaketh to the ſame effect, grounding likewiſe vpõ the ſame golden foundation. *Rex eſt Dei Miniſter & Vicarius; Poteſtas itaque ſua iuris eſt non iniuriæ, Poteſtas autem iniuriæ Diaboli eſt, non Dei*, and ſo after to the like effect, as St. Edward had ſpoken. *Bracton.*

I think therefore, there is no man but wil say that King *Lucius* did accordingly: namely, that according to the contents and directions receiued, he did call a Counsel or Parlament, a thing vsed in those times, as I will shewe heer-after: He did suruay the State and Lawes of his Kingdome; that which was agreeable to Gods holy worde he did confirme, and that which wanted he did newly enact. Reasons perswading me to thinke, that King *Lucius* did so, are these: First his Godly zeale, which would neuer haue written to *Rome* for Lawes, without a great desire, to haue the best lawes to gouern his Kingdome; and to my vnderstanding it is senceles and absurd, to say that whē he had receiued an answer so good & agreeable to his desire, that he would leaue it vnfollowed and vnperformed. It cannot be said that he wanted will, seeing he sent for Lawes, nor that he wanted time, opportunitye, power, or consent of his Nobles or people, seeing all, or the most part, yea the *Druidæ* and *Flamnies* embraced Christian religion together with him, as our Histories testifie; and he ruled the *Britains* long time after in flourishing peace and tranquility. Againe, that he retayned some of the former Lawes; the common opinion of

Beda, ponticus virum. Polidor Monemuth.

those

those auncient Christians of the Primitiue age, perswadeth me, wherof I will speake more, whē I come to K. *Lucius* his lawes. Yet by the way one text will I cite, out of *Iunius*, who saith that as long as Heathen Emperors, & Kings held the raines of gouernment, the Christians gaue not their mindes to dispute the question of the vse and authoritie of *Moses* Lawes; but when the State changed, & Christian Emperors were aduanced, then those most sapient & orthodox all Fathers, seeing it most expedient to turne about this world, without any greater noise, forbearing the troubles of secular affayres, left the authoritie, both of making lawes & giuing iudgements to the ordinarie Magistrates; but if any were instituted *Contra Rectā Rationem, quā in natura et scriptura explicauitus De*; against right & good reaso, which God in nature & Scripture hath described, that either with gentle & calme admonitions they procured to be amended, or patiently suffred, if it were incurable, least the whole common good (which *Augustin* before called Peace) should be stirred in hope of some particular; For, that many times the importunitie of men bringeth to passe, whiles they seek to cure one euill, they shake and weaken the

Iun. in epistola, ad Politiam Mos.

publike eſtate. In which wordes beſides the point in hand, is much to be obſerued, that nothing ought to bee in the Lawe againſt reaſon: which is the vniuerſall Maxim, the maine foundation, and as I may call it, the abridgement of all our common Lawe, which heere you ſee to be the rule of thoſe auncient fathers, and affirmed to haue been expreſſed by the Diuine wiſdome of God in nature and Scripture. This is it whereby all our queſtions, and controuerſies, all our arguments and iudgements, all our Statutes and cuſtomes, are ruled and ouerruled, enlarged and corrected.

But againe to our purpoſe, St. *Augnſtin* ſpeaketh much to the ſame effect. *Hæc ergo cæleſtis Ciuitas dum peregrinatur in terra &c.* This heauenly City whiles it is in Pilgrimage vpō earth, calleth Citizens out of all nations; and in all tongues, aſſembleth a Pilgrime ſocietie; not regarding the manifold diuerſities of manners, Lawes and cuſtomes, not repealing or deſtroying any of thoſe thinges, whereby the terrene peace (ſo I reade) is eyther procured, or preſerued, but rather keeping and following that, which although it be diuerſe in diuerſe nations, yet ſtill is intended to one and the ſame end of

De Ciuit. Dei. lib. 19 c. 17.

Terrene

Terrene Peace, ſo long as it is no hindrance of the Religion, whereby the onely ſupreme and true God is taught to bee worſhiped. To the ſame effect he ſpeaketh againe in the nineteene Chapter of the ſame booke.

Theſe authorities therfore leade me to beleeue, that King *Lucius* retayned ſuch of the auncient inſtitutions, as were not *Contra rectam rationem* (as *Iunius* ſaith) *quam in natura et ſcriptura explicauit Deus.* And that he did take ſome part of his Lawes, out of the Scriptures, is proued by the teſtimonies of our Chronicles, compared with the words of the moſt Godly & religious King *Alfred* in his Lawes. The Chronicles ſay that *Gildas* the auncient Godly *Brittaine* Prieſt who liued not much more, then 500. yeares after Chriſt, and not much aboue 300. after *Lucius*, tranſlated the Britiſh Lawes into Latine, & afterward *Alfred* the Godly *Saxone* Prince, trãſlated the ſame into *Saxon*; and ſo continued them to poſteritie. *Alfred* in the entrãce to his Lawes, ſetting firſt the ten Commaundements, and many judiciall Lawes of *Moſes*, and laſt the Apoſtolicall Epiſtle directed to the *Gentiles*, mencioned in the Actes, which hee concludeth with theſe wordes vſed in ſome tranſlations.

Lamb. Arc. Higdē Pontic. virun: Galf. Mon.

Lamb. Ar.

Actes. 15

That

That you will not haue done your ſelues, do not vnto others; windeth vp all with this concluſion: By this one cõmaundement (ſaith he) it is euident inough, that Law and right is to bee giuen to all men equally. Neither ſhall we need of any other, whatſoeuer iudiciall booke, onely let this bee infixed in the minde of him that ſitteth as judge vpon others, that he giue no other ſentence of other men, then he wold haue to be giuen in his owne cauſe.

But in the propagatiõ of the goſpel (ſaith King *Alfred*) when many men beleeued in the word of God, then many *Synodes* were gathered; and alſo in England, the Biſhoppes & other the wiſeſt men aſſembled, who being taught by the mildenes of Chriſt, did ſet vpon euerie firſt offender a pecuniarie paine, the leuying whereof they cõmitted to the Magiſtrates. &c. And a little after. *Theſe I Alfred the King haue gathered together and committed to writing.*

Lamb. Archaion.

Then ſpeaking alſo of the lawes of later time, he addeth that there were many thinges, alſo which he thought fit to be obſerued in the acts of *Ina*, *Offa* & *Ethelbert*: but the former words are plainely ſpoken of the Lawes heere eſtabliſhed vpon the firſt receiuing of the Goſpell by

King

King *Lucius*, & doe fully prooue that the counsel of *Eluthcrius* was followed, but with the mercifulnes & mildehartenes of our Lord christ after the *Saxon* phrase, and the *Sinodes* which *Alfred* speaketh of in the first arriual of the Gospell, were the Parlaments of *Lucius*, whose course that it was such as I haue said, I pray you see also by that which followeth, wherein I wil first speake of the remnants of the Lawes of nature, secondly of the auncient Brittish Lawes made before and by *Lucius*, and lastlye of those that followed vntil the Norman.

Cap. 6.

IT is manifest in Histories, both sacred & prophane, that the moste auncient Nations had their Kings or Princes, their Priests, their Elders or Senators, and their Dukes or Captaines: and this seemeth to bee according to the Lawe of God & Nature, & it is seene in the Histories of *Egipt*, *Iudæa*, *Madian*, *Arabia*, *Greece*, *Italy*. So *Cæsar* found in *Britaine*, *Reges*, *Druidas*, *Principes*, et *Nobiles Duces*. For it is to bee noted, that where hee nameth the toure Kinges of Kent, he sheweth withal, that they were all subiect to *Cassibellan*, and calleth *Cingetorix Nobi-*

Cic. 3. Leg. Gen. 18. Ieb. 12. Psa. 105. 21

Cæsar.

lem ducem, which proueth that he ment by Reges (as commonly the Romanes vnderstood) men of nobilitie, power & gouernemẽt, though it were but in one City, as he saith of *Immanuentius* in London, who perhaps might then be a Lieutenãt of the city, as the Lord Maior is now, and so dooth *Polidor* take it, saying that they were foure Princes, such as wee now call Earles or Dukes.

Proem. L. 2

It is prooued also amongst Antiquaries, that the famous *Belinus* and *Brennus*, & it is not hard to be proued that *Mulmutius* and others were Kings of this Iland, and *Beda* the most faithfull Historian saith literally, that before the yere six hũdred after Christ in *Britaine*, *Seruabãt vtcunque Reges, Sacerdotes, priuati, et optimates suum quique ordinem.* But of the auncient Kings as likewise of their Elders or Nobles, I finde two sorts, the one fatherly, and the other tirannical. the first hauing and maintaining the authority of the first age, wherein *Patres familias regebant*, the Fathers of the greatest families which contained others, were Kings, as *Adam* and *Sem* taken to be *Melchisedec*, and *Assur* his Sonne: the Fathers of inferior families, yet populous and great, were Elders, or Princes; as *Abraham*, *Isack*,

Bed. Lib. 1.

Aug. de Ciuit. Dei Lib 15. et 19.
Arist. 1. Polit.
Gen. 17. 29
Gen. 27. 29 et 49. 10.

Iack, *Iacob*, and *Iob*. Such there were in *Britain*, as *Cæsar* & *Gildas* doe shew. The second sorte obtained their authoritie by warre, violence or Rebellion, as before the floud, *Cain* and afterwards *Nimrod*, *Esau* and the like.

And of this sort there was also in *Britaine* whose times *Gildas* calleth *vetustos immanium Tyrannos annos*. But as I take it the most ancient Nobilitie of *Britaine* had a name signifying as much as Elders or Senators, as they had in other Countries before mencioned. Of that signification there is a name in many auncient recordes to be found, a name of auncient nobilitie, which importeth in signification an Elder, which I take it was the name of that first & most auncient British Noble man. The name it selfe is Thane, and I finde this name vsed for a Noble man in this Iland in *Denmake* & in *Ireland*. It must needes be a name proceeding frō some of the nations that raygned in these Countries, but neither the *Romans*, nor *Saxons*, nor the *Danes*, nor the *Irish*, can giue a reason whereby to claime it as a woord of theirs: Onely the *Britaines* haue a word most neere, both in letter, signification & vse. For where the *Danes* call a Lord or a Noble mā Thane, as the *Britains* did,

Gildas in Epistola.

and where the Iriſh call him Tane, which by reaſon of his Elderſhip is next to ſucceede in ſome Lordſhippe: yet neither of them giue a reaſon for it: onely the *Britaines* vſe the woord *Heane*, or *Hane*, to ſignifie an Elder; which anſwereth to the word *Thane*, as I ſaid both in letter, ſignification & vſe. And to verifie the ſaying that all thinges make an Harmonious conſent to truth, The Hiſtorie teſtifieth, that the *Saxons* immediately after their comming into this Iland, called their Nobles by a name of the ſame ſignification *viz.* Earles or eldermen, a name of Nobilitie vnknowne in their owne Countrie; where (as I take it) they are called *Graues* or *Greues*, ſignifying a gouernor, which name alſo they brought hither, and it remaineth in ſome vſe to this day: But the name of Elder they learned of the *Britaines*.

And heereunto agreeth the text extant amongſt the Lawes of S^t. *Edward*. *Sicut modo vocantur Greue, qui ſuper alios perfecturas habent, ita apud Anglos antiquitus vocabantur Ealdermen, quaſi ſeniores, non propter ſenectutem, cum quidam adoleſcentes eſſent, ſed propter ſapientiã. Et ſimiliter olim apud Britones temporibus Romanorũ in regno iſto Britanniæ vocabantur Senatores,*

Lamb. Archaion

natores; qui postea temporibus Saxonum vocabantur Aldermani. And to say that the *Britaines* vsed the name of *Senator*, or borrowed this name of the *Romanes*, is very publikely, for they liued in perpetuall hatred and hostility with them, as they shewed vpon all occasions, & followed not their lawes, nor institutions in any thing: but by constraint, seeing them to be Paganes, Idolaters, oppressors of their liberty, and persecutors of their Religion.

Neither doth *Beda* nor any other Historian speake of any Lawes made in *Britaine* by the *Romanes*, nor of any iudgements by them exercised: but of those (if they be to be called iudgements) whereby *Albanus* & other holy Martirs were moste cruelly put to death. Therefore I conclude that the *Britaines* tooke this name & other institutions, not of them, but either of the auncient statutes of nature, or of the latter restitution by the Gospell. These Nobles therefore together with the Priests & other selected commons, made the common Counsel of this Iland whereof *Cesar* speaketh, and which at this day is called the Parlament, and in the moste of our Histories called *consilium Sapientum*. In the Lawes of *Edward* before the conquest, & in the

Lawes of King *Ina* made about the yeare 720. after our Lord Christ, there is mencion of theis Parlament consisting of these degrees of men.

An hundred yeares before that, we read that Bertha the Christian Queene of Kent procured judgements to be established *Cum consilio sapientum*, that is by the Parlament, where also the venerable Bede speaketh warily, saying that it was after the exãple of the *Romans*, but not saying it was after the *Romane* manner. An hundred yeares before that againe in the time of *Arthur* the warrior, we reade of Parlaments, and the moste learned King *Alfred* in his lawes saith plainely, that vpon the propagation of the Gospell, *Nonnulli tam in Anglia quam in alijs regionibus Episcoporum aliorumque clarissimorum sapientum conuentus agebantur*, which could not bee after the *Romane* fashion: & whosoeuer obserueth the circumstances of the matter, he shal perceiue it euidently to bee spoken of the time of King *Lucius* (as I said before) for in his time being peaceable, the Gospell was first publikely receiued, and after his death, this Kingdome continually laboured with intestiue warres, in which it was almost impossible to gather counsels, and to establish Lawes and gouernment as

Bed. Lib. 2

Lamb. Ar-

Beda Galfrid. Monñ. Polidor.

he

he ſpeaketh. And as it was in this ſouth part of *Britaine*, ſo was it likewiſe in the north, as appereth by their Chronicles. They had Kinges, Prieſtes, Nobles, and Parlaments, agreeable to the forme of gouernment of the moſte auncient Kingdomes, and to the Lawes of God written in Nature & Scripture: & in this forme conſiſteth the eſtate of both the Kingdomes of great *Britaine* euen to this day. And thus much concerning the principall perſons, whereof the body of our ſtate did and doth conſiſt: the next thing to be conſidered is, of thinges according to the proceedings of the inſtitutes, but becauſe nothing can bee without a place, and wee ſhall haue better occaſion to ſpeake of the diuiſion, property and dominion of things heereafter, I will therefore vnder correction, intreate now ſomewhat of the auncient diuiſion of this Iland, the common place & ſubiect of our diſcourſe, and of the iudgements therein aunciently vſed.

Cap. 7.

IT is thought by ſome, that this Iland before the comming of the *Romanes*, was rude and barbarous: & by other, that King *Alfred* was the diuider of this Iland into ſuch Shires and porci- *Camden.*

ons

ons (for ſo the word importeth) as at this day we ſee. But theſe two opiniõs to be true ingeneral, I cánot yeeld; for if I vnderſtád our ſtories, it wil eaſily appeare that this lád was aunciétly lõg, before *Alfreds* time, deuided almoſt into as many parts, & in like manner by the ſeueral families or nations of aũcient *Britaines*, which are thus reckoned by *Hooker* in his 2. Booke of the deſcription of *England*. Cap. 4. viz. *Nouantæ Selgouæ Dannonij, Gadeni, Ottadeni, Eppdij, Cerones, Carmonacæ, Careni, Cornubij, Decantæ, Logi, Mertæ, Macomagi, Venicontes, Texati, Polij* or *Elgoui, Brigantes Pariſi, Ordouici, alias Ordoluci, Cattieuchlani, Coritani, Trinobantes, Demetę, Cangi, Silures, Dobuni, Atrebatij, Cantij, Regni, Belgæ, Durotriges, Giruij, Iceni, Tegenes, Cenimagni, Segontiaci, Deiri, Venedoti, Bibroci*, with ſome other whome he and others name. And of theſe ſome (as Mr. *Camden* plainely ſheweth) poſſeſſed one, others two or three of theſe Shires which now are knowne, & theſe nations of Britaines are in part named by *Cæſar*, others by Mr. *Camden*, *Polidore* and others. So that King *Alfreds* diuiſion ſeemeth not altogether new, but rather a renuing and more exact deſcription of the old. And this is cõfirmed by the teſtimony

Camden Brit. ann.

mony of *Polidore*, who in the lawes of *Mulmutius* maketh mention by name of Counties, or Shires. Of those Lawes more shall be said hereafter: In the meane time it appeareth that this land was deuided into porcions, or shares, euen by the *Britains*. There were also amongst those *Britains*, euen before *Lucius* & *Cæsars* times, diuers great Cityes, wherof 28. are named by our Chronicles, and some of thē by *Caesar*, besides Townes and Castles innumerable, as *Huntington* saith and as appeareth by the auncient Iter *Brittanniarum* described by the *Romans*, which are no signes of a barbarous people. For if ciuilitie take his name of a Citie, or Citizen; & Cities, & Citizens cānot be ruled without goodlawes, the *Britaines* were ciuill, and ruled with good Lawes which were Citizens of many great Cities. And the inconstancy of Cæsar and other *Romanists* is heere to bee noted, which call the *Britaines* barbarous, and yet confesse that they had many good Cities, Kinges, Nobles, Gouernors, discipline of warre, and peace, commerce, and traficke with forraine Nations, and al other parts of ciuilitie. And the question of *Polidore* is somewhat ridiculous, whē he asketh whether any man euer reade of *Canterburie*, *Bath*, *Carleil*,

Higden Polichron Huntingdō.

Iter Britan

See the discription of England by Hooker.

or *Leceſter*, in Cæſar, *Tacitus*, Strabo or *Ptolomy*. No gentle Mr. *Polidore*; but in Cæſar wee reade of the City of *Trinobantes*, and of other Cities, and of the Citie of the *Brigantes*, *Londinium*, *Louentium* & *Maridunum*, in *Tacitus* and *Ptolomy*, & your ſelfe confeſſe in the ſame book that it was a Law among the *Britaines*, that the inner parts of the Iland ſhould not be diſcouered to ſtrangers. As for the faſtneſſe of *Caſſibellan*, and the painting of their faces; if the ſtorie be wel examined & circumſtances compared, it will eaſily be prooued that ſuch thinges were not originally in the gouernement, and maners of this our countrie, but were the wilde fruites of long continued ciuill warres, that raged amongſt them, proceeding of tirranies in their Princes, ſuperſtition and Idolatry in their Prieſts rebellion, ſedition, murders, theſts, adulteries and diſobedience in the Subiects, ſome of which thinges are to be gathered by the words of Cæſar, and al of them are laid to their charge by *Gildas*, and other Hiſtories. For ſuch thinges procure the wrath of God to bee powred out vpon them (as ſaith the bleſſed Apoſtle,) as *Italy*, *France* and other Countries haue, by that meanes receiued ſome barbarous touches, and

Epheſ. 5.

Ireland

Ireland yet waſted and ſubiect to great calamities & deſolation, is an eye witneſſe of the ſame experience, which heeretotore was gouerned with peace ad ciuilitie, and now hath many examples extant of ſtrange immannities. And as theſe are the iuſt plagues inflicted by the diuine Iuſtice vpon our Neighbonr Iland for the contempt of the Goſpel, and ſuch offences as aforeſaid: ſo were the ſame inflicted in thoſe times vpon the *Britaines* for treading vnder foote the light of nature, and the knoweledge of God (which *Gildas* ſignifieth that the firſt inhabitāts had) & many excellent doctrines of Religion, & of juſtice, which were but obſcurelye, & in part preſerued by the *Druidæ* and ſome fewe of the better ſort.

But to returne where wee left, as in other thinges the *Britaines* maintained the manners of the auncients, ſo in that auncient diuiſion of this Land into ſeueral Nations and families, the moſt antique manner of great nations was obſerued. For not onely amongſt the *Hebrewes*, but amongſt the *Perſians*, *Athenians*, *Romans*, & in this Iland the *Scots* being freer from publike inuaſions, had the like diuiſions, being a poynt of ciuill gouernment, verie neceſſarie for many

Diodor Sic.

Xenophon Liuy. et ali.

good and Politicke conſtitutions, and therefore vſed and preſerued amongſt all the primitiue Nations, as agreeable to reaſon and nature, and is to this day obſerued as moſt conſonãt to the word of God.

Cap. 8.

AS in the diſtribution of perſons, and of the land, the *Britanes* were politick and ciuil: ſo in their proceedings of Lawe, in their iudgements, and in their Sciences, it appeareth that they were not ſo barbarous as hath been taken: for their varieties of excellent learning (to note that by the way) Sir *Iohn Priſe* in his booke to King Edward the ſixt, prooueth that all learned ſciences, were knowne and handled amongſt them. To his booke I ſend thoſe that are deſirous to be ſatisfied in that point. And although it may be ſtrongly inferred that a Nation giuen to the ſtuddies of all excellent learnings, muſt needes be poliſhed with good lawes: yet for the more cleere euice heereof, I purpoſe to ſhew that their lawes in particular were moſt iuſt & good, as being deriued out of the lawe of God, written in nature, and in Scripture; and for that reaſon not altered, but tranſmitted to poſteri-

Sir Iohn Priſe. Hiſtoriæ Brit. Defenſio.

tye,

tye, and that they doe yet remaine amongſt vs, as I ſaid before. Firſt of al vnder tauour I cannot agree, the opinion conceiued by *Gratian* that al thinges by the Lawe of nature, were common; but as I take it the diſtinction of properties was enacted by Almighty God in the beginning, & by him imprinted with other Lawes, in nature, by vertue of the wordes, Beare rule ouer the earth: which gaue to man, both dominion and propertie of all thinges. And to proue that it was ſo, & that it was ſo vnderſtood, it appeareth by *Cain* and *Abel*, who in the verye beginning were ſeueral poſſeſſors of grounds, Lands, Sheep, fruites of the earth, and Cities inhabited, and in the Hiſtoryes of *Abraham*, *Iob*, and other the Patriarches, there is mencion made of buying and ſelling, and of diuers offences puniſhed by Lawe. But by what Lawe, if not by the Law of nature? And if the Law of nature be the ſame which is contayned in the Lawe & the Goſpell, as *Gratian* in the firſt entrance of his diſtinctions affirmeth; If the tenne commaundements be an abridgement or expoſition of the Law of nature, as he ſaith in an other place: And if diſtinction of propertyes be enacted, & the deſire of other mens goods forbidden euery where in

Part. 1. Diſt

Gen. 1. verſ 28. 29.

Gen. 4.

the Lawe; the Goſpell, and the tenne commandements; then is *Gratian* in this poynt, contrary vnto him ſelfe. But that it is ſo forbidden, appeareth by the eight and tenth Commaundement, and in the firſt to the *Romanes*, where Rom. 1. Couetouſnes euen in an heathē man is accounted for a ſin, which could not be but by the lawe of nature, as it is in that place vrged. For where there is no Lawe, there is no tranſgreſsion ſaith St. *Iohn*, & other lawe there is not to condemne a Pagan. Therefore, taking that for a point not hard to be proued, and which all lawes haue taken as a principall, confeſſed by vertue of that *Ariſt. Eihic* lawe which is euery where the ſame (how-ſoeuer ſome authorities haue ſwayed to the contrary) we finde partly by the wordes of *Cæſar* & *Dio*, that this Iſland had her owne lawes concerning the diuiſion of groundes, inheritances, Iudges, & the diſtinctiō of properties, that there were certaine courſes of proceedings, and that there were puniſhments for contempts and of- *Dio Lib. 53* fences. Firſt *Dio* ſaith that 20. yeares after the comming hither of *Cæſar*; *Britannia ſuis Legibus vſa eſt*; *Britain* vſed her owne Lawes; and what theſe owne Lawes of *Britaine* were, *Cæſar* ſheweth: his wordes be theſe: *Druidæ fere de*

omnibus

omnibus controuersiis publicis priuatisque constituunt, et si quod est, admissum facinus si cædes facta, si de Hereditate, de finibus controuersia est, ijdem discernunt, præmia pœnasque constituunt, si quis aut priuatus aut populus, eorum decreto non stetit, sacrificijs interdicunt. The *Druidæ* saith *Cæsar* (whose discipline he affirmeth to be found out and most perfect in *Britaine*) doe iudge for the moste part of all publike and priuate controuersies. If any offence or Homicide be committed: or if the controuersie bee for bounds or inheritance, they doe determine it, appointing punnishments & rewardes; If any priuate man, or corporation stand not to their decree, they forbid them their sacrifices. &c. vnder the names of offences and Homicides, he comprehendeth all criminall causes, vnder controuersies of lands or inheritance are contained all ciuil actions; by the words of coutrouersie, iudgement, determination and decree, he sheweth that they had a certaine forme of proceeding: by punishments and rewardes, he sheweth that their sentence was compulsiue.

So this testimony proueth that they had a setled forme of iudgements in those three maine parts, whereof *Iustinian* hath composed his whole

whole worke, I say *De personis rebus et actionibus.* To touch a few particulars, it must needes be inferred vpon *Cæsars* words, that they had a certaine forme of conueyance and course of inheri: ce in their lands. For else how could controuersies of inheritance and Lands arise to be decided in iud gement? Now if any man consider well of our auncient forme of conueyance by Feoffment and Liuerie, and the solemnitie thereof vsed, not onely after, but before the con-

Histor. Ely. queſt, he shall finde it to bee a relike of the fatherly age, wherein the Law of nature was with

Gene. 23 great wisdome obserued. For if you compare it to the assurance of *Abraham*, you shall finde like precisenes of words: I giue thee (saith *Ephron* which is & euer was, our auncient word, *Do* or *Dedi*. Like descriptiõ of things: The field of *Ephron* in *Machpelah* ouer against *Mamre*, the field and the Caue and al the trees &c, like assistance of witnesses; in the presence of my people; and that was also our manner enen before the *Norman* conqueſt, and I can finde no beginning vnlesse I bring it to those auncient times. Our word of inheritance (heires) & that thei by th'eldest Sonne shold inherite, is eyther taken from the same lawe of nature, and exam-

ples

ples of the Patriarkes, as *Sem* was heire of *Noah* and *Iapbet* was appointed to dwell in his tents. God ſaith to *Abrahã*, *Izhak* ſhalbe thine heire, & *Izhak* made *Iacob* his heire; Claime is made to ſome part of the Lãd of *Iſrael* in the name of *Iſraels* heires: Or elſe it was inſtituted by K. *Lucius* after the exãple of God himſelfe, who made Chriſt the Lord & heire of all things, and adopteth vs in parte onely to be heires with him. Laſtly, alſo the manner of our ſucceſsion by inheritãce, & how one heir is to take after an other, as they are in degrees of proximitie, is by the moſte exacte reporter of our Lawes Sr. *Edward Cooke* (his maieſties Atturnie general) collected and declared, vpon the judgement of God, in the caſe of *Salphahads* daughters, cyted in *Ratcliffes* caſe; where he alſo obſerueth, that in this point, as almoſt in all others, the common lawe is founded vpon the Law of God. And this our maner of conueyance, and limitation of inheritance, I haue not read of in any other nation, neither can finde any other beginning for it. For other conueyances, I finde a patent of King *Arthur* the worthy, and another of one K. *Kenwalchius*, both recited in a Patent of King *Henry* the ſecond, made to the Monaſtery of *Glaſſen-*

Ieiim. 49. 1

Hebr. 1. 2

Report. 3.

Numb. 27

Defenſio Hiſtor. Brit

bury as I learne of Sir *Iohn Priſe*, who ſetteth downe words of King *Henries* Patent, as I wold King *Henrie* had done of the other. Alſo there are many other auncient Charters yet to bee ſeene of manors, landes and liberties, graunted to Abbeyes, Churches & other Religious houſes long before the Conqueſt; as of King *Kenredus* to the Abbey of *Euesham*, of others to the Cathedrall Churches of *Landaffe* & St. *Dauies* &c. But of all other, moſte excellent is the Patent procured by *Turketulus* Lord Chancellor, & Lord of threeſcore Manors, who ſurrendred them all to King *Eared*, and obtained ſixe Manors, which are alſo named by *Ingulfus*, to bee graunted to the Abbye of *Croyland*, together with many auncient Cuſtomes and new liberties; by which may be vnderſtood the vſe of the Common lawe then and long before. Concerning alſo the Maner of ſuites in Law, & taking diſtreſſes or pledges, & that the defendãt ſhold finde ſureties or mainpernors, a thing verie auncient, wherof we reade in the lawes of King *Ina*, & yet continuing amongſt vs; I finde ſome ſuch matter noted by *Iob*, where hee ſpeaketh of taking pledges, and deſireth that God would put in ſuretie to anſwere him.

Lamb. Arc.

Iob. 17. 3. et 24. 3. et 9.

Alſo

Alſo the particular Lawes of diſtreſſes doe prooue that they are taken out of the word of God. For by the cõmon Law no man may diſtreine a Millſtone; a thing ſpecially prouided by God himſelfe. Our auncient kindes of punniſhments, as by impriſonments, Fetters, Stocks. &c are named likewiſe in ſeueral places by *Iob*. Capitall executions are deriued from the Law giuen to *Noah*; whoſoeuer ſheddeth mans blood, by man ſhall his blood bee ſhed. Laſtly our puniſhment by vtlary ſeemeth to be moſt auncient, & of the ſame beginning; for take *Bracton's* deſcription of vtlary, and compare it with the words of *Cæſar*, and both with ſome paſſages of Scripture: and you ſhall finde them agree very neere together. *Bracton* thus deſcribeth the forfeiture of vtlary. *Forisfacit patriam et regnum, et exul efficitur, et talem vocant Angli vtlagh, et alio nomine vocari antiquitus ſolet, Friendleſinan, et ſic videtur Forisfacere amicos; Si quis cum eo communicauerit aliquid, eadem pœna pumendus eſt; Caput gerit Lupinum.* And ſo foorth at large, which Mr. *Stanford* thus briefly comprehendeth. The out lawe forfeiteth his countrie, his friends, his peace, his law, his right, and his poſſeſsion: which is true euerie way, but

Deut. 24.

Gen. 9. 6

Bracton.

Stant. L. 3.

to bee vnderſtood according to the ſeuerall natures of vtlaries that are amongſt vs. Now Cæſar of the *Druidae* ſaith thus: *Si quis eorum decreto non ſtetit, ſacrficijs interdicunt. Hæc pæna apud eos eſt grauiſsima. Quibus ita eſt interdictum, ij numero impiorum et ſceleratorum habentur, ab ijs omnes decedunt, aditum eorum ſermonemque diffugiunt, ne quid ex contagione incommodi accipiant. Neque ijs petentibus ius redditur neque honos vllus communicatur.* Conferre this with the ſentẽce pronounced againſt *Cain*, Thou art curſed from the earth, when thou tilliſt the ground, it ſhall not yeeld her ſtrength to thee; a vagabond and a runnagate ſhalt thou be in the earth.

Cæſar.

Geneſ. 4.

Thus he forfeited his Countrie and his poſſeſſiõs, the profits of his labour, & of his groũd, his friendes and his peace. And this is the nature of our vtlary vſed to this day in capitall offences, but in leſſer contempts more eaſye and tollerable. Now of theſe thinges before deſcribed, haue conſequently followed all our proceedings, aſwell in Real as in perſonall actions; for the proces of diſtreſſe in the parſonall, was but the taking of pledges of the defendant, for apparance, and the proceſſe by Cape

in the Real, was but the ſeiſing of the Land, for a ſurety to the ſame prepoſe; from whence alſo many other ſecundarie concluſions of reaſon haue neceſſarilye enſued, as the returne and loſſe of Iſſues, defaults, contẽpts, forfeitures, &c. Further in our Chronicles wee reade of Lords & tennants in the daies of *Gorbonian* the good, and of fealtie ſworne to the Prince in the time of *Elidurus* the godly, which of neceſſitie were accompained with tenures, ſeruices, diſtreſſes, and ſuch like: And thus much be ſpoken of the auncient viſible footeſteppes, of the lawe of nature, which were before *Lucius*; Of which you may reade alſo in the learned diſcourſe of the aboue named, Sir *Edward Cooke* before the third Booke of his Reportes, where he citeth the ſentence of *Ceſar*: ſaying that the diſcipline of the *Druidæ* was found out in *Britannia*, and that we had ſome formes of proceeding from the Greek; which may well bee; but you ſee the grounds and beginnings are much more apparant to bee ſeene in the records of that firſt age deſcribed in the ſacred Hiſtory, & doe yet remaine amongſt vs.

Galfrid mõ.

Pontic. virũ.

Now followeth to ſpeake of the ordinances inſtituted by our auncient *Britain* Kings, agree-

able to the word of God; and to this day alſo remayning: and firſt of the Lawes of *Mulmutius* & others which were called the Marchen law.

Cap. 9.

ALthough concerning the Hiſtorie of *Brutus*, there may bee ſome reaſons to doubt which learned men haue gathered, yet, why there ſhould not be one *Brit* or *Brute* King of this Land, whoſe Pedegree Sir *Iohn Priſe* out of an auncient Chronicle deriueth from *Iaphet*: And if there were no ſuch *Brit*, yet why the whole Hiſtorie of Britaine Princes ſhould for the fabulous interpoſition of one or two men be reiected, as ſome haue done? I ſee no reaſon ſeeing the concurrēt teſtimonies of diuers Britiſh monumēts of great credit, which Sr *I. Priſe* citeth, & the concordance of the Scottiſh Hiſtory in many thinges, and that of ſome of thoſe Princes remains to this day, apparāt monumēts of others credible Hiſtories, ot others the moſte ineuitable teſtimony of auncient Lawes. The learned Mr. *Cambden* a iudicious examiner of theſe things, offereth to prooue that the famous *Brennus* that ouerranne *Italy*, was King of *Britain*, (a thing which the ſaid Sr. *Io. Priſe* hath alreadie

Cambden in Britannia

readie moſt learnedly performed:) to me it is as well prooued that *Mulmutius* his Father was King likewiſe of this Land: neither doe I thinke the warres of the one ſo glorious, as the Lawes of the other. But if any be ſo wilfully ignorant, as to deny, not onely the Hiſtorie of Brit, but of his ſucceſſors: Let them name if they can imagine, who built theſe auncient Monnuments, Ludgate, Bellingſgate, Caerebranke or the Citye of Yorke, *Carleil*, and *Caercoil* or Colcheſter and ſuch like? and who made theſe auncient Lawes, called the *Mulmutian*, & Mercian Lawes, of which we haue to ſpeake. Many writers which without queſtiõ did ſee, or might ſee and reade the writinges of *Gildas* the wiſe Prieſt, and *Alfred* the excellent Prince, doe conſtãtly avouch that *Mulmutius Dunwallo* Father of *Belinus* and *Brennus*, eſtabliſhed thoſe Lawes which were afterward called *Mulmutinæ*, which *Gildas* tranſlated into Latin, as hee confeſſeth himſelfe (ſay they) and afterwards King *Alfred* turned them into Engliſh. Out of which wordes I gather theſe obſeruations, firſt that there was ſuch a King and hee made theſe Lawes without queſtion. Secondly that theſe Lawes were verie iuſt, for elſe ſuch men as Gil-

Ponticus virun Lib. 2. Higden. Ceſt lib. 1. Galfrid mõ. Baleus. Hooker. Pol. virgil.

das

das and *Alfred* would not haue tranſlated and preſerued them. Thirdly that they doe yet remaine amongſt our common Lawes, although hardly to be diſcerned which they bee: for the ſame writers teſtifie that they being mingled amongſt the lawes of *Alfred*, were by St. *Edward* reduced to one common Law, which the Norman yeelded vnto, and himſelfe and all his ſucceſſors are ſworne to obſerue them. And ſo ſay *virũnius & Monemuthenſis. Leges Patris quæ Molmutinæ dicebantur inſtituit inter Britones quæ vſque ad hoc tempus celebrantur inter Anglos.* So alſo ſaith *Higden*: where ſpeaking firſt of the Marchen Lawe, containing both Lawes of *Mulmutius* and *Mertia*, and of the *Dane* Law, & weſt *Saxon* Law, Ex *his tribus Legibus* (ſaith he) *Sanctus Edwardus tertius vnam Legem communem edidit, que Leges Edwardi vſque hodie vocantur*: of theſe three lawes St. *Edward* the third made one common Law, which to this day are called the Lawes of *Edward*. Beholde therefore the Fathers, yea and the very name of our common Law. Beholde a full proofe of Sir *Iohn Forteſcues* teſtimonye concerning our Lawes. Some particulars wherof as they were in thoſe times, are alſo mencioned in Chronicles.

Pontic. virũ Monemuth.

Ceſtrencis. Pol. virgil.

For

For by *Polidore* it is thus recorded: *Mulmutius ius atque Leges nouas, et illas quidem ſalutares dedit, quas deinceps Mulmutianas Leges appellarunt. Templa deorum immortalium Loco aſyli omnibus ad ea confugientibus eſſe conſtituit*; & a little after, *Pondera ac menſuras rebus vendendis emendiſque poſuit, fures et noxium omne genus hominum ſeueriſſime puniuit, fecit quamplures vias, decreuitque in quam Latitudinem fieri deberent, ac Lege ſanxit earum ius ad Principem duntaxat pertinere: eiuſque iuris violatoribus, atque ijs qui in illis maleficium aliquod facerent conſtituit pœnas: præterea vt ne terra vacaret, neue populus rei frumentariæ inopia frequenter premeretur, aut minueretur, ſi pecora ſola occuparent agros, qui ab hominibus coli deberent, cõſtituit quot quiſque Comitatus aratra haberet*, and ſo foorth: where you ſee that he made lawes for Sanctuaries, for weights, for meaſures: againſt theft, robbery, and other offences: for high waies & Nuſances, and for tillage and Husbandrie: and by the words you may eaſily gather, that they were the ſame, or much to the ſame effect, as they are now, either continuing in the common Law, or reuiued by Statutes: and that in thoſe daies alſo the land was deuided into certaine parts, which *Pol Virgil.*

 are

are now called Counties. *Brecus* and *Fergusius* likewiſe in Scotland, neere about the ſame time alſo made Lawes for diuiſion of their Land into Tribes, hundreds, and wapentakes ſaith the Chronicle, and for puniſhment of murder, theft and other offences.

Againe by *Higden* it is thus recorded *Anno mundi* 3529. *ante Chriſtum* 445. *Mulmutius* King of the *Britaines* the 23, but the firſt Lawmaker, ordained that Churches Howes, Cities and High-waies, ſhould inioy a Priuiledge or libertie. This *Higden* expoundeth to be a kinde of Sanctuarie, that if any offender did fly to any of theſe, he ſhould no further be purſewed but ſuffered to eſcape, which interpretation cannot be made but onely of the Church, and therfore to be let paſſe, as made by a Monke ignorant of Law.

But our common Lawe giueth a ſound and verie conſonant expoſition. For euen from the moſt auncient times to this day, there is a kinde of priuiledge in vſe, that theſe foure ſhould bee free from diſtreſſe. For no man ought to be diſtrayned by the beaſtes of his Plowe, nor in high waies, nor in Markets or Churches. This freedome from diſtreſſe then I take to be the priui-

ledge

ledge ordayned by *Mulmutius*, chiefly becauſe it is indifferently commõ to al the foure things aboue mencioned: & although diuers later ſtatutes doe confirme & enlarge this priuiledge to ſome one or other of the foure, yet none of thẽ name altogether, as they were in *Mulmutius* Law, and by the likenes of the Priuiledge it ſeemeth they were ioyned at firſt, Alſo by the words of *Articuli Cleri*: it ſeemeth to bee more aũcient then the ſtatutes. For the Clergie there cõplained of diſtreſſes taken in their glebe as a wrong. Beſides ſome of the writs made vpon this priuiledge haue theſe words *Contra Legem et conſuetudinem Regni*, which for the moſt part is intended to be the moſte auncient common Law: yet if this interpretation be not accepted: then take another collected vpon the auncient Lawes of the *Saxons* and the *Norman*. They ſaie that the Church hath a priuiledge which they call *Pacem*, and is vnderſtood the Sanctuarie. The foure waies haue a peace, which is, that all Nuſances in them ſhall bee amended (note the antiquitie of our Lawes, of Nuſanz.) But for markets and plowes, no other priuiledge can be heard of, but onely this wherof I haue ſpoken, to be free from diſtreſſe, which

Marlebr. Cap. 2. et 15 w. 1. Cap. 16 51. H. 3. Art. Cleri. Cap. 9. Fitz. N.B. 90.

is ſtill continued. And this *Polidor* ſeemeth to ſay, expounding the law of *Mulmutius*, to bee, that the beaſtes of the plow ought not to be led away for debt, ſo long as the debtor had other goods. Now if the Priuiledge from diſtreſſe was ſo auncient, it muſt needes follow that diſtreſſes were much more aunciently in vſe as I noted alſo before. And from the vſe of diſtreſſes by ſecundary concluſions and deductions of reaſon, followed many Lawes amongſt vs, yet in cõmon practiſe; as of Attornments, Repleuies, Auouries, Tenures Seruices: *Quid Iuris clamat, quem reddit reddit.* Per *quæ ſeruicia* & ſuch like, which by neceſſitie muſt be vnderſtood, where diſtreſſes are frequent, and ſo much of the *Mulmutian* Lawe. Now followeth of King *Lucius.*

Cap. 10.

BY many ſteppes and degrees I am come to the Lucid ſtarre of Britaine, well deſeruing that name, for that in his time, religiõ, Iuſtice, & gouernmẽt, begã to ſhine more brightly in this kingdõ. And in the hiſtory of him, & his ſucceſſeors the Readers may obſerue three things: Firſt that this Nation aboue all Nations of the earth (except

(except the Hebrewes)hath had moſt vertuous, religious & Godly Princes. Secõdly that as our auncient lawes were moſte righteous,being deriued from the lawes of God written in nature: So *Lucius* and his ſucceſſors eſtabliſhed onely ſuch good and iuſt Lawes, as were agreeable to Chriſtianitie, and deriued out of the Scriptures. Thirdly that all calamities of this Land hath proceeded of publike & notorious crimes againſt God and his ſeruants,our good Princes, and againſt religion and religious lawes. Concerning *Lucius* himſelfe, I cited before the teſtimony of King *Alfred*,a witneſſe farre aboue all exception: who ſaith directly and expreſly in his Lawes, that vpon the propagation of the Goſpel, when many men receiued the faith of Chriſt as well in England as in other regions, certaine Synods,aſwel of Biſhoppes,as of other moſt noble wiſe men were gathered,which appointed puniſhments for offendors.And a little after, theſe Sanctions or Lawes, I *Alfred* King haue collected & cõmitted to writing,where he ſpeaketh of certaine Sinodes,of Biſhops & Noble & wiſe men;it muſt needes be meãt of Parlaments,as we ſhewed before.For wee reade of no generall counſell in Britaine,and of Prouin-

ciall Sinodes, it cannot be intended; where hee ſaith that they were gathered vpon the propagation of the Goſpell, he ſignifieth the time of
Beda. L. 1. King *Lucius*, when the Goſpell was firſt publikely receaued in this Land, For it cannot bee vnderſtood of the Chriſtian *Saxons*, for of them he ſpeaketh by name afterwards, ſaying that he vſed choice and iudgement in refuſing ſome of their lawes, and taking others; whereof I inferre firſt that thoſe words before were meant of the firſt Chriſtian *Britaines*, (whom he nameth not becauſe they were enemies to the *Saxõs*) Secõdly that thoſe Britiſh lawes were more ſincere & agreeable to Godlynes then the *Saxon*. Thirdly that thoſe ſanctions by him collected, are ſome of the auncient common Lawes, which yet remaine, for that we finde no other collection of Lawes made by him: But this all Hiſtories teſtifie that he tranſlated into *Saxon* the ſame which *Gildas* turned into Latin, & that the ſame were gathered into our common Law by S^t. *Edward* and called Saint *Edwards* lawes.

Beſides it cannot be ſayd that theſe good lawes were made by any other, but onely by *Lucius*, for neither was any other of the Britaine Princes ſo Godly & religious, as he, neither had any

of

of his ſucceſſors ſuch peaceable poſſeſsiõ of the Land or conueniency to make lawes as he had. For immediately after his death, and continually till the Saxons time, the whole ſtate trauelled with forein and inteſtine enemies. Laſtly the teſtimony of *Polidore* confirmeth this, who giueth this moſte honorable teſtimonie of King *Lucius*: that he left his kingdome aſwell *Optimis inſtitutis prouectum* aduaunced or amended with the beſt inſtitutions or Lawes, as *diuina religione auctum*; ſo that without queſtion it is that he made ſome of our Lawes. *Pol. Virg.*

But particularly which of theſe lawes or inſtitutions now extant were enacted by *Lucius*, it is hard to ſay: yet to ſpeake my opinion, I think firſt our Lawes of fines and amercements was eſtabliſhed in his time. For ſo ſaith *Alfred*, that thoſe firſt Chriſtian Parlaments conſiſting of Biſhops & moſt noble wiſe men, being taught by the mercifulneſſe of Chriſt, did appoint for euerie firſt offender a pecuniary paine, where you ſee not onely the thing, but almoſt the verie name of *Miſericordia*, which is vſed to this day in amercenents, and is afterwards frequently vſed in the Saxon and Norman Lawes, and this was for ſmaller offences. But

for

for the greateſt, the words of *Alfred* goe further; ſaying of the ſame firſt Chriſtiãs, *Proditori tantummodo ac Dommim deſertori banc initiorem pœnam haud infligendam exiſtimarunt, quippe qui eiuſmodi viro minime parcendum cenſuerunt tum quod Deus contemptores ſui omni miſeratione indignos voluit, tum quod Chriſtus illorum qui ei mortem obtulerunt non eſt omnino miſertus.* Where you ſee that by the teſtimonie of *Alfred* they tooke the preſident of their Law againſt Treaſon, from the examples of Chriſt and of God. What was that Lawe? It followeth afterwards. *Qui capiti et ſaluti Regis perfidioſe inſidiabitur vita et fortunis eius omnibus priuator.* that the Traytor ſhould forfeit, life, Lands, and goods. So was *Iudas* puniſhed and that puniſhment *Elfredus* felt being conuicted of treaſon in the daies of King *Athelſtane* as appeareth by the ſaid Kings Charter, recited by Mr. *Fox*: here alſo appeareth not onely the Eſchet which you ſee is expreſſely ſet downe in the words, but alſo trialls, for it would be iniurious & vaine to ſet downe a puniſhment for offences, and not ſet downe a courſe how the offender might be cleered or condemned: and it is moſte vnlikely, that King *Lucius* and thoſe firſt Chriſtians wold immitate

Lamb. Arc.

In leg. Alf. Cap. 4

Actes. 1.

Fox in mon.

imitate God and Christ in seueritie of punish-ment, and not much more studie to imitate him in the Iustice & sinceritie of their Trialles.

Therfore I think that the same *Lucius* ordeyned our Tryals by twelue, & that according to the example of Christ. For, that it is agreeable to the Scriptures, the learned Sir *Iohn Forteſcue* hath fully prooued, and whoſoeuer ſhall conſider of it indifferently, ſhall finde that it is the moſte righteous and Godly courſe that euer was found out, and therefore moſte likely to proceede from the piety of that holy King. *Sir Iohn Forteſcue.*

Alſo in that pureſt age of Chriſtianity, it was held for a ground, that firſt the Scriptures ought to be ſearched, whether any rule might bee found for the action intended, or not; if not, then *Mos populi dei et Sanctorum exempla* the manner of Gods people and the examples of holy men were to be followed. *Gra. Diſt. 11. et Diſt. 20.*

And if holy men ought to be imitated, then who if not our moſte holy Sauiour? as the Apoſtle ſaith: Be followers of God as deere Children: and be followers of mee as I am of Chriſt. Epheſ. 5 1. Cor. 11.

Quo eſt deteſtabilior iſtorum immanitas: So much the more is their crueltie to be abhorred, which labour to hide, not onely the words, but

alſo the exãples of Chriſt away from vs. Therefore I ſay *Lucius* did inſtitute the trial of al matters in fact, to be by twelue witneſſes, as our Sauiour Chriſt ordayned, & choſe twelue to beare witneſſe of his reſurrection; neither doe I finde any other law preſident or exãple from whence this manner of Trialls ſhould be taken. But I finde that the reuerẽd *Eluther*ius, from whom *Lucius* had much of his light, vſed the ſame rule & practiſe, for that good Biſhop *Iuxta ordinationem Apoſtolorum* according to the Apoſtles ordinance, did decree that no meates vſuall for mankinde ſhould be refuſed of Chriſtians; And *Exemplo Chriſti* by the example of Chriſt, ordained that none ſhould be regraded before he were condemned.

Act. 1, 22. et 10 41. Iohn. 15. 27

Faſcic. Tẽp.

Thus they tooke a rule or preſident for euerie thing out of the Scripture. And the authoritie of *Moſes* to the contrarie is not to be obiected; for although he ſaieth that at the mouth of two or three, an offender ſhall die; yet he addeth not the negatiue, that more ſhould not be vſed. Therefore the Apoſtolicall Canons before cited, and the example of our Sauiour in the affirmatiue was a better warrant. And it is moſt apparant that iuries were vſed among the

the Chsiſtian *Britaines* and before the *Saxon* times; for proofe whereof, although in mine opinion, the teſtimony of the profoundly learned Sir *Iohn Forteſcue* ſhould bee ſufficient ſaying expreſſely that theſe lawes were vſed in the time of the *Britaines*, yet for the further ſatiſfaction of thoſe that leane to much to the opinion of *Polidor* and other Italians, I will adde more reaſons & authorities to the ſame point. Firſt the moſt learned Antiquary of our Nation Mr. *Camden*, ſheweth plainely that it was not inuented by the Conqueror, (as *Polidor* ſaith,) but it was in vſe in the daies of King *Etheldred* the *Saxon*; Secondly the moſt excellent profeſſor of our Lawes, Sir *Edward Cooke* before cited, proueth by ſubſtantiall records, that this triall was before the Conqueſt. So there are three witneſſes euerie one of exceeding great learning againſt one Maiſter *Polidor*.

Sir. Iohn Forteſcue.

Camden Britanne.

Præf in L. 3.

Tantæ molis erat Romanam excindere gentem.

Such a labour it is to ouerthrowe theſe Italian opinions, of which our nation is too fondly credulous. But let vs goe forward, & although my ſimple diſcourſe can adde no weight vnto their moſt graue iudgements, eſpecially the laſt cited, which is grounded vpon records: yet vn-

der fauour, I will adioyne ſome other teſtimonies and proofes. In the time of King *Edward* the third, when by all mens conſent our Iudges were moſt exactly learned (as in deede it was a time excelling, not onely in Martiall glorie, but in learning and wiſdome) I finde Mr. *Belknap* a reuerend Iudge, concurring in opinon, with theſe before named. The Law (ſaith hee) was founded in this, that euery Inqueſt ſholdbe taken *Per duodecim liberos et legales homines et non per pauciores.* It it were a foundation of the common law, then without queſtion it was one of the firſt Lawes; and we muſt needes conteſſe that no Law can be without tryalls, and it cannot be proued that euer any other triall was vſed, beſides this in pleas of land or inherirance in this kingdome.

41. E.3.31.

But to make it yet more plaine, the City of Lõdon is and was in the times of the Britaines, by the confeſſion of many learned writers, namely Cæſar *Tacitus, Ptolomy, Ammianus Marcellinus, Gildas Galfridus &c.* a moſte auncient City, a place of gouernmẽt, & ruled by a gouernor, the ſea of a Flamine or Biſhop, not a faſtenes of the woodes as ſome haue imagined vpon the generall and vncertaine words of authors, which neuer

uer ſaw it, but frequented and celebrated with concourſe of Merchants & pléty of commerce as *Tacitus* affirmeth. Now I pray you beholde with the eyes of your minde, the forme of ſuch a Citie: and tell mee how you can imagine it to ſtand without a Court of Iuſtice, the bond of commerce, for the deciding of controuerſies? or how you can imagine that ſuch a Court ſhould be without a due forme of Trialls? But leaſt I may ſeeme to deale by immagination; for the firſt point that it had a Court; *Galfridus Monemuthenſis* and *Ponticus virunnius* out of the auncient Britiſh Hiſtorie, doe teſtifie in playne words; that in the daies of *Iulius Cæſar*, *Irelgas*, Nephew of *Caſsibellan*, being ſlaine by *Cuelinus*, Nephew to *Androgeus* Gouernor or Lieftenant of London, a commaundement was giuen to *Androgeus* to bring *Cuelinus* to the K. Court, there to receiue Iuſtice: his anſwere was *Seſe ſuam habere curiam, et in illa definiri debere quicquid alquis in homines ſuos clamaret, ſi ergo rectitudinem de Cuelino decreuiſſet appetere ipſam in vrbe Trinobantum ex veterum traditione fieri præciperet.* He alledgeth that hee hath his Court, wherin ought to be determined whatſoeuer any man laide to the charge of his men, &

Calf. Mon.
Pontic. vir.

that right ought to be done vnto them in the Citie of London according to the aunciēt cuſtome. For the ſecond point, if Mr. *Polidor* will not giue vs leaue to thinke that London had this iuriſdiction in *Cæſars* time; yet without his leaue, I wil proue by many infallible records that the ſame City of Londō had this iuriſdiction, and namely this tryal by twelue in the time of the *Britaines*, thus:

This City of London hath and had alwaies from time out of minde their Huſtings, & the writ of right in London tryable by twelue; the Aſsiſe of Freſhforce tryable by twelue; and the tryall of pleas of the Crowne by twelue; it muſt needes be that theſe Liberties were begun eyther by Parlament or preſcription, eyther in the time of the Normās, of the Saxons, or of the Britaines. But in 14. *E.* 2. when they muſt needes haue knowne if there had bin any Patent or Acte of Parlament, either of the *Saxons* or *Normans* for it. *A quo warranto in Itinere in Turri London* being brought, for theſe and other Liberties: The cominaltie of that City make their claime to the reſt by ſeueral Patēts, but to theſe by auncient cuſtome and preſcription confirmed by Charters in theſe words. *Quoad articu-*

lum

lum quod & e proferunt cartam Henrici aui Regis nunc in qua continetur quod idem H. rex, 16. *die Marcij Anno regni ſui vndecimo conceſsit ciuibus predictis, quod Huſtingum ſemel tantum in hebdomada tenatur ſecundum conſuetudmem ciuitatis. Et proferunt aliam cartã eiusdem Domini H. Regis in qua continetur quod idem Dominus Henricus Rex* 20. *die Martij Anno regni ſui* 52. *cõceſſit ciuibus ſuis London quod de placitis ad coronam pertinentibus de his maxime quæ infra ciuitatem prædictam et eius ſuburbia fieri contingeret, ſe poſſunt diſrationare ſecundum antiquam conſuetudinem ciuitatis prædictę.* By theſe Charters you ſee, that the pleas aforeſaid are to be proceeded and tried according to the preſcription or cuſtome of the Citie, & ſo are the words of the Aſsiſe of Freſhforce. By the way the reader is to vnderſtand, that preſcription or cuſtome here, is not ſaid to be the continuance of many yeres, as 50. 60. or an hundred: But that in Law is ſaid to be by preſcription, the beginning whereof cannot be proued by any record, writing, or lawul teſtimony, & ſuch a preſcription is heere to be vnderſtood.

Now that the cuſtome & ſuch a preſcriptiõ of London is & was in the Conquerors time and before,

before, that their trialls ſhould be by a Iurie of twelue, all their records teſtifie : The reuerend Iudge *Fitsherbert* teſtifieth and moſt euidently the Record of the *Quo warranto* aboue cited teſtifieth, for ſo it goeth forward, *Quoad articulum predictum quod ipſi de placitis ad coronam Regis pertinentibus ſe poſsint diſrationare ſecundum antiquam conſuetudinem ciuitatis; dictum eſt eis per iuſticiarios quod declarent Curiæ modum et formam huiuſmodi diſrationamenti et conſuetudinis. Qui dicunt quod Antiqua conſuetudo ciuitatis eſt quod ſiquis liber ciuitatis aliquod delictum fecerit per quod periculum vitæ incurrere debeat, et vſque Iter Iuſticiariorum manucaptus fuerit, et inde in Itinere poſtea, ſit ad Rationē poſitus, ſe diſrationare poteſt per duodecim Iuratores patrie ſecundum Legem communem vel per magnam Legem Ciuitatis, viz. per triginta ſex legales homines ciuitatis. &c.* Nothing can bee more plainely proued, then the point in queſtiō is by this record: viz. that the trial by twelue was vſed both by the common Law, and by the moſt auncient cuſtome of London, I ſay by cuſtome, whereof no beginning could be prooued. Wel then it was cleere in the times of *Edw.* 2. *Edward.* 1. and *Henry* the third, and ſo much

Fit. N.B.6.

is

is alſo proued not onely by this record, but by their great Charter, for they giue them no new liberties, but *Ciuitas London habeat omnes antiquas conſuetudines*, & this was within two hundred yeares after the Conqueror: if any Law or Patent had bene made of it in al that time; without queſtion, they would haue pleaded the patent or Law, and not preſcription. For a Satute or patent doth determine a preſcription. *Mag. Car.*

The Conqueror, dooth he make them any graunt or Patent heereof, or dooth *Edward* the Confeſſor one of the *Saxon* Princes, graunt any ſuch matter or make mention that any ſuch thing was graunted by patent vnto London? *Ne my*: Not a minim of any ſuch matter, It is written in their Lawes, *Debet etiam in London quæ caput eſt regni et Legum, ſemper curia Domini Regis ſingulis Septimanis die Lunæ Huſtingis ſedere et teneri*, Marke how it agreeth with the patent before pleaded. *In ea itaque ſuperſunt arduа compota et ambigua placita coronæ et curiæ domini regis totius Regni predicti quæ hæc vſque et cõſuetudines ſuas vna sẽper in violabilitate cõſeruat vbicũque ipſe rex fuerit ſiue in expedicione, ſiue alibi, propter fatigationem gentium et populorum regni iuxta veteres Conſuetudines bono-* *Lamb. Arc. in Leg. Edwardi. Liber Recordorum. London Dunthorne*

See the Charter of K. William the conqueror in Hooker's Chron.

rum patrum et predeceſſorũ et omniũ principum et procerũ et ſapientũ Seniorum totius regni predicti. Beholde then here is no new inſtitution mencioned neither by the Conqueror nor by the Cõfeſſor, but ſtill the auncient cuſtomes.

And if this had bene by patent or Parlament of any *Saxon* Prince; without all queſtion theſe two Princes would haue knowne it. For all the *Saxon* gouernment in peace from the firſt King vnto the laſt was not aboue 300. yeeres, & both *Edward* and *VVilliam* were moſt diligent ſearchers and Regiſters of all the lawes, Liberties & Cuſtomes of their kingdome, as appeareth by the Domeſday Booke, and by that which is recorded by *Houeden* and others.

Beſides in the *Saxon* times, not a peece of lãd paſſed from the Crowne, and much leſſe any liberties or Iuriſdictiõs, which are parcel of the royal prerogatiue without Patent, as appeareth by the manifolde patents of manors, Landes, & Liberties made to Churches and Monaſteries, whereof thoſe that belonged to the Abby of Croyland, are faithfully recorded by *Ingulfus*, thoſe of the houſe of *Ely* by another; and others are to be ſeene in the Churches that remaine.

Ingulfus Hiſtoria Elienſis.

The City of London therefore had this Libertie

bertie and Maner of trial in the *Normans* time, not by patent or new Law, but by preſcription; they had it in the *Saxons* time not by patent or new Law: therefore by preſcription, & it muſt needes bee true, that they had it from a time whereof no proofe could be made, that is, long before the *Saxons*. I ſay by preſcription as it is pleaded euen from the Britaines. And this that I haue ſaid of London, I may ſay of all auncient Cities where they haue like cuſtomes and Liberties; yea the auncient hundred, Courts, Shiermotes, Wardmotes, Swainmotes, Leets, and Wapentakes, which are often mencioned in the *Saxons* Lawes as thinges in vſe. Let any man ſhew me, what other kinde of triall or inquiſition, they had then this, and *Quo warranto* by what law they had this, but by like preſcription. If you bring foorth the triall by fire and water called *Ordell*, it was by al likelyhood but a ſuperſtitious inuentiõ, in the *Saxon* times, & was vſed onely in criminall cauſes where the truth could not otherwiſe be known as appeareth by the Law of *Canutus*. And although the Conqueror in his abſolute commaund did ſomething of his owne head, yet it appereth plainely that when by the earneſt intreaty

In Legibus Canuti de Foreſta.

Houeden Lamb.

intreaty of his Nobles, he was perſwaded to eſtabliſh the former lawes; he then by the counſell of his Nobles, and according to the courſe and common Lawes of the Realme, impanelled twelue men of euerie Shire, to inquire & make a true preſentment of the ſaid auncient Lawes and cuſtomes, for ſo be the words: *Electi de ſingulis totius patriæ comitatibus duodecim viri, iureiurando Coram Rege primum confirmauerunt, vt quoad poſſent recto tramite incedentes, nec ad dextrã nec ad ſiniſtrã diuertentes, legum ſuarum, et conſuetudinum, ſancita patefacerent &c.* And amongſt the reſt, they make mencio of the cuſtomes of London, which I cited before. I ſay nothing here, that the footeſteps of this triall, are found in the lawes of *Etheldred* made at wantage, which is cited by Maiſter *Camden*; nor of the ordinance, made for the mountainers of Wales: nor of the law of *Kennethus*, the famous Scottiſh King about the yere of our Sauiour Chriſt, 840. mentioning ſome ſuch matter; nor of the learned & diligent Hiſtorians, that liued neere about the conqueſt: & might eaſily haue tolde vs if any ſuch thing had been begun by the Saxons; nor of the Hiſtorie of *Ely*, written before the conqueſt: and *Ingulfus* ſoone after, plainly

Lamb. Arc. Houeden.

Malmesbury. Huntingdõ. Ethelwardus. Hiſtoria Ely remaining with Sr. Robert Cotton. Ingulfus.

plainly ſpeaking of Mannors, Feoffements, Shiriffes, Coũty Courts, Tearmes at Londõ, recoueries in an aſſiſe or writ of right, as of thinges thẽ common and vſuall.

We read alſo of Parlaments, wapentakes, homages, tealties, diſcents from the Grandfather to the Nephew, *Eſchets* to the King for want of heires, in the daies of *Aurelius Ambroſius*, and of *Arthur* the worthy, & ſtreight way after, *Gildas* maketh mencion of Courts, Iudges, Freſhſuit after thieues, & Iudgements which could not be without trialls. By all which I thinke it is manifeſt that theſe points of common law, & namely theſe trialls by twelue, are of moſt auncięt antiquitie, according to the commõ law, and vſed amongſt other cuſtomes of the citie of London before the times of the Saxon and *Norman* Princes, of whome no ſuch Libertie or courſe of proceeding could be gotten without patent, and no other forme of auncient tryalls doth appeare: vpon which I conclude, as before, that they had it in the times of the *Britaines*.

Leland.
Hooker.
Galf. Mon.
Gildas.

The ſame is prooued by al the auncient and new records of Aſsiſes, of Freſhforce, of writs of right, and other tryalles in London, which muſt bee all falſified and many thouſands

of records beſides, if wee ouerthrowe this preſcription. And this being ſo conſonant to the iudgments of thoſe excellent men before cited, *Cãden, Belknap, Sr. Io. Forteſcue,* & *Sr. Ed. Cook*, Let vs now leaue Maiſter *Polidor* & his followers which either neuer ſaw or did not vnderſtand, our auncient Hiſtories and Records; let vs leaue them (I ſay) to their owne imaginations, with this admonition to all diſcreet Antiquaries, that they be not ouer-haſty to beleeue either the *Roman* or other Authors, ſpeaking of the *Britaines* thire enemies, but holding them ſuſpect for partialitie or ignorance, which may eaſily appeare to euerie iudiciall Reader, let vs followe the true groundes confirmed by theſe faithfull Monuments of our Lawes, and the Hiſtories thereunto agreeing. And this being aſcertained, it is eaſie now to beholde, from whence all our Aſsiſes of nouel diſeiſin of Mordanceſter, of darrain preſentment, our great Aſſiſes, Iuries, Challenges & the reſt, of which Mr. *Bracton* at large diſcourſeth, are lineally deſcẽded, being as I take it the greateſt part of our common Lawes, and it appereth by that which is before ſpoken, that theſe alſo are moſt agreeable to the Scripture of God; whereupon I conclude

clude fully, that all our common Lawes was in vſe in the *Britaines* time long before the *Saxons*, howſoeuer ſuppreſſed & the bookes thereof defaced by forreine inuaſions, and inteſtine diſſentions. And thus much of *Lucius* and the *Britaines*. Now of the *Saxon* Princes.

Cap. 11.

IT hath bene a worke of the ſpecial prouidéce of Almightie God, & of his infinite mercie to this Iland, in the middes of Poetical fables wherwith the Britiſh Hiſtories haue bene mixed, and of thoſe Barbarous inuaſiõs, which haue waſted and ſpoyled them, to leaue vs yet certaine remnants and monuments, whereby to iudge of thoſe long paſt Antiquities; in iudging wherof, men by taking contrarie courſes, haue made the controuerſie more difficult, that the truth foũd out might be the better confirmed. For ſome haue giuẽ thẽſelues to fauour the *Romane* Hiſtorie ſo much, as to abrogate all faith and credit from the Britiſh, as if the ambitious Romanes & Cæſar would ſay nothing for their owne aduantage, who of all others moſt couetous of glorie is iuſtly noted by *Suetonius*, *Lucian*,

cian,and *Asinius Pollio* to haue written his commẽtaries,as much as he might,to ſaue his owne Honour, eſpeciallye of his Actions in theſe remote places.

Others haue gone ſo farre to the bowehand, as to fauour all the vanities of the Poeticall Bardes, as if nothing could bee denied, which they had once turned into Rythme. But that God which came into the world to beare witneſſe of the truth(ſo much doth he loue it)hath left vs rules and directions to trie out the verity of aunciẽt times. By the mouth of two or three witneſſes,euerie word ſhall be confirmed ſayth *Moſes*,and(as it is moſte certaine)truth cannot be ſo much oppreſſed as to be vtterly deſtitute of prooſes. Let therefore the proote reſt vpon witneſſes and compariſon of circumſtances, & it will appreare as Sir *Iohn Priſe* truely auerreth and learnedly prooueth, that the Britiſh Story is in many things more to be credited then *Cæſar*,and *Polidore*,and other *Italians*. Beſides the Scottiſh Hiſtorie agreeing in many things with vs,manifeſtly conuinceth the *Romanes* of their Arrogancie and vanitie,and with all miniſtreth further groundes, not onely to proue the antiquitie and ſincerity of our common Lawes, but

that

that the ſame or others much like obtained in Scotland alſo, as well as heere, which may bee ſeene by the Lawes of *Brechus* & *Fergusius* anſwering in time to *Mulmutius* and *Mercia*, and by the *Lawes* of *Kennethus*, not much diſtant from *Alfred*, and laſt of all by their Bookes of *Regiam Maieſtatem* a principal booke of Common Law amongſt thē, agreeing in effect with our *Glanuill*. And to ſay truth there was litle difference in Lawes and Religion, betwixt theſe two Nations, vntill the bloody warres, that began after the time of our King *Henry* the third, before whoſe daies *Glanuill* did write. Againe the moſt auncient of the *Saxon* Princes, & lawmakers, doe make mencion of many thinges in our common Law, which we are forced to beleeue, that they receiued from the *Britaines*; for that, they ſpeake of them, as of things vſual and common, *Ina*, *Alfred*, *Edgar* & other the *Saxon* law makers, ſpeake of the Parlament, of Iudgemēts, of Treaſon, of Sanctuaries, of Purgatiō, of execution by hanging, for theft, of freſhſute after theiues & homicides, of eſcapes, of Tearmes kept at London, of Recoueries, of Exchanges, of Feoffements, of intales, of Cōmons, inclofures, and the Law of *Curia Claudenda*, of the lawe of *Lamb. Arc.* *Hiſtoria Eliensis.*

diſceit,it in ſelling thinges corrupt or vitious;of dowers,Leaſes,Rents,Farmes,ſeruices &c. And many other,as things thē in vſe, which were allowed as agreeable to Gods word, by thoſe *Saxon* Chriſtiās being vtter enemies to the *Britaines*,and yet moſt deuout in Religion,and ſincere in Iuſtice,as their Lawes doe teſtifie. For which cauſe I will touch certaine of the notable *Saxon* lāwes, onely to ſhew the Godlineſſe of thoſe auncient *Saxons* and Scottiſh Kings, and how in that time the matters of our common Lawes were vſuall and common.

Inas about the yeare of our Lord 720. beginneth his lawes thus: *Inas* by the grace of God, weſt *Saxon* King , by the perſwaſion and inſtruction of *Cenred* my Father , and of *Hedda* and *Erkenwald* my Biſhops,and with al my Aldermen,& the eldeſt wiſemen of my people, & in a great ſummons of Gods Seruants,for the health of our ſoule & conſeruation of our kingdome, (I haue enacted) that right Lawes and Iudgemēts be confirmed throughout our kingdome. Cap. 1. That the miniſters of God obſerue the appointed rules and maners of liuing: Then followeth Lawes for obſeruation of the Sabaoth,againſt theft,robbery,murder , & ma-

ny

ny other offences; and therein, is mencion alſo made of Land-lords, of Tennants, of Rents, and ſeruices. *Kennethus* the moſt worthy Scottiſh King, ſoone after the ſame time, maketh verye iuſt and good Lawes, wherof this was one. In euery Shire (this was before *Alfred*) Let skiltull men in the Lawes bee appointed to reſide, hee that blaſphemeth the name of God, of the Saints, of his Prince, or of the Captaine of his tribe, let his tongue bee cut out. The moſt religious K. *Alfred* about the yeare 880. beginneth his lawes thus: The Lord ſpake vnto *Moſes* theſe words, ſaying: *I am the Lord thy God which brought thee out of the land of Egipt, out of the houſe of Bondage, thou ſhalt haue none other Gods beſides mee.* And ſo foorth as in the decalog and other Iudicialles of *Moſes*. Then follow certaine lawes againſt periury, concerning Intayles, againſt Sacriledge, Treaſon, Quarrelling, Fighting, Fornication, yea & againſt immodeſt touching of a womá; with other lawes of greate ſinceritie, a manifeſt and approued Vicar and Lieuſtenant of God, a ſecond *Dauid*, whoſe delight is in the Lawe of the Lord, which to confirme, the ſame King tranſlated the new Teſtament out of Latin into the Vulgar Saxõ, for the

vſe of his ſubiects, ſome Copies whereof (as it is ſaid) are yet remaining amongſt vs. So farre did the learning of thoſe daies differ from the ignorance of theſe *Romane* innouators. *Edward Anno Dom.* 920. Thus beginneth: I *Edward* K. commaund all *Greeues* that they giue right iudgements to all according to their iudgement Booke. *Alfred* and *Gutrum* thus made their league by act of Parlament *Ante omnia Deum vnum &c.* before al things that one God is to be loued & Worſhipped. Secondly that humane Lawes are to be proclaimed as common to Chriſt and the King. Then followe Lawes for payment of Tithes, for obſeruation of the Sabaothes &c. And by this league *Guthrunus* which ſome call *Gurmundus*, & was in Baptiſmo named *Ethelſtane*, obteyned *Suffolke*, *Norfolke*, & *Northumberland*, to be giuen to him to holde by Fealty of the King. *Edmund* ſets this preface to his Lawes: I *Edmund* King to al my Subiects doe plainely ſignifie, that in a ſolemne aſſembly both of the Clergie and Laity, I haue ſtudiouſly inquired of the wiſeſt of my kingdome, by what meanes the Chriſtiã faith might be moſt aduanced. And to vs all it ſeemed moſt commodious that loue and mutual kindnes ſhould be maintayned

Ioh. Picus cited by Mr Lamb. Arc.

tayned amongst all men throughout our Kingdome. *Etenim tædet nos harum quotidianarum pugnarum*, For we are tired with these quotidian fightings and contentions. O godly Prince! O true Vicar of the God of Peace! *Edgar* enacteth Lawes for the obseruation of the Sunday, and of publike feasts and fasts vnder the paines contained in the iudiciall booke. And that euery man shall freely enioy the benefit of the common Law. Note the common lawe euen then named, before S^t. *Edward* & the Conqueror. *Canutus* the Dane thus: First let all men most deuoutly & religiously worship one God. Al men obserue one rule of Christian Religion. Al men obey *Canutus* the King with due fidelity and obseruance. All defend and keepe the church of Christ with holy & euerlasting peace, & continually frequēt the same &c, with many other most Godly and Christian lawes, & after many Footesteps of auncient Lawes, which yet remaine in vse, he concludeth with a moste ardent exhortation to all men to turne vnto God and to obey his commaundements, another Lieftenant or vicegerent of Christ. *Edgar* the peaceable confirmeth the Liberties & rights of the Church, & amongst other things, enacteth

eth that euerie man ſhall enioy the benefit of the common Lawe. Like matters are found in the Lawes of *Ethelſtane*, *Etheldred*, St. *Edward* and *VVilliam* the Conqueror, who confirmeth the ſame with ſome ſmall addition, and hath left them to vs conſecrated by his owne othe, and the othe of all his ſucceſſors. You ſee then the ſacred Maieſtie of our Imperaill Princes, whō God hath vouchſafed not onely by the cō-feſſon of ſtrangers & enemies, but by theſe their Lawes to be his Vicars & defenders of his faith. And by theſe things that haue been ſaid, it may fully appeare, firſt how ſincerely and deuoutlye thoſe excellent Princes followed the counſell of *Eluther*ius giuen to *Lucius*, in taking lawes for their kingdome out of the word of God, and how true it is that we affirme that our auncient common lawes were begun in the times of the firſt *Britains*, grounded vpon the lawes of God, printed in Nature and Scripture, continued by the *Saxons* in their iudgement bookes, & tranſ-mitted to vs by Saint *Edward* and the Conque-ror. And conſequently the ground of Sir *Iohn Fortes*cues teſtimony, that this land hath bene poſſeſſed by *Britaines*, *Romanes*, *Saxons*, *Danes* and *Normans*: And in all the times of theſe ſe-

uerall

uerall Nations,and of their Kings, this Realme was ſtill ruled with the ſelfe ſame lawes and cuſtomes,which if they had not bene right good, ſome of thoſe Kings mooued eyther with Iuſtice or with reaſon,or affection,wold haue chãged or aboliſhed them, ſpeciallye the *Romanes*, who did iudge all the world by their owne Lawes. Thirdly what direction and Preſidents our Princes and Parlaments haue had to follow in making Lawes, and what Lawes the whole Kingdome is bound to obſerue, by that ſolemn othe that is taken for the obſeruation of S*t*. *Edwards* lawes and the Lawes of the Realme, as partly alſo is noted vnto vs in the preface of that famous Statute,made againſt Prouiſors in the 25. yeare of King *Edward* the third. And laſtly what reaſon may be giuẽ of the manifold calamities,ſent by Almighty God,the moſt iuſt & ſeuere judge at ſũdry times vpõ this Realm, namely the ſuppreſsing, and conſequentlye the violation of this his Couenant, of theſe our auncient lawes, and of the law of God, whereupon they are founded,by the predominant violẽce of Idolatry,ſuperſtitiõ, iniuſtice,vncleanneſſe,Breach of faith, and loialtye,both before the *Norman* and ſithence. If it be not ſo, peruſe

uſe the Particulars that the holy *Gildas*, and after him, the learned Sir *Iohn Priſe* obiecteth againſt the firſt *Britains*; that the reuerend *Bede* and *Geffery* of *Monmouth* vrge againſt the ſecond age; that Maiſter *Camden* & other Chronicles, but ſpecially Maiſter *Fox* collecteth againſt the *Saxons*; that are at large deſcribed in the times of King *Iohn* & King *Henry* the ſixth, who ſuffered themſelues and theſe lawes to bee ouerſwaied by the ſupreheminence of *Rome*, & of the cõtrary ſide, if we cõſider the beſt meanes to eſtabliſh the perpetuall vnitie and felicity of theſe two mightie nations, now againe reunited, we ſhall finde it to conſiſt principally in conforming them, both as much as may bee to the lawes, of that God of vnitie which ordeyned the auncient Lawes of both kingdomes to be very like, & almoſt the ſame, as I haue ſhewed. For what Kings haue reigned in more magnificence and glory then the Britaine Princes inſtiled by *Eluterius*, the Vicars of God in their kingdome, then the *Saxon* Princes indowed by *Beda*, with the Title of *Chriſtianiſſimi*, thẽ the *Normans* which haue moſte mainteyned theſe Lawes, & moſt oppoſed themſelues againſt the vſurping power of the forraine Prelate, namely

Edward

Edward the 1. the 3. and the 6. *Henry* the 7. and the eight, acknowledged by the enemie of our faith to bee defender of the faith,& the late moſt of all excellent, *Elizabeth*, which was bleſſed with a kingdõe,longer then the raignes of ten that curſed her. And now the no leſſe excellent Maieſty of K. *Iames*,the true heyre aſwell of the goodneſſe as of the greatneſſe of his Predeceſſors. And who haue fallen into greater miſeries then thoſe that beeing inueſted with ſuch magnificent Titles by right, haue ſuffered others to take their Titles & authoritie by vſurpation; of whoſe Calamities becauſe my heart doth tremble to thinke, I will forbeare my pen to write. Yet by this we ſee how God hath fed and directed vs with the ſtaffe of Beautie, and with the ſtaffe of Bandes,but now hee will breake his ſtaffe of beautie, to diſanull his couenant, made with all people, and hee will breake his ſtaffe of bãdes, to diſſolue the Brotherhood between *Iuda* & *Iſraell* except we repẽt of our manifold ſinnes. I will therefore conclude with the Godly words of one of our famous and learned Iudges *Bracton*,and one of our vertuous and Heroical Kings *Canutus*, The firſt taking his ground out of the many times remembred, and neuer to bee forgotten, Epiſtle of *Elutherius*,ſaith thus: *Rex non debet eſſe ſub homine,ſed ſub deo et Lege, ad ſimilitudinem Ieſu Chriſti,* *Zach.* 11. *Bractõ. L.* 1

Bracton li. 1. *cuius vices gerit.* And againe Iudges doe ſit in the ſeate of the K. himſelf, as in the throane of God, inſteed of the K. as inſteed of Ieſus Chriſt. For the K. is the Vicar & Lieftenant of God, & iudgemẽts are not the iudgements of men, but of God; and therefore it is ſaid that the heart of the King is in the hãd of God. And a little after, into the ſeate therefore of judgement, which is as the Throne of the Diuine Maieſtie, let no man vnwiſe or vnlearned, preſume to aſcend, leaſt hee turne light into darkeneſſe, and darkeneſſe into light, and leaſt with an ignorant hãd like a mad man, he ſtrike the innocent & ſpare the offender, and leaſt he fall from aboue as from the Tribunall of God, by attempting to flye without winges to ſupport him. And when any mã is to judge, or to be made a judge, let him take heed, leſt by iudging peruerſly and againſt the Lawes, for requeſt or reward, or a litle temporall comoditie, He purchaſe to himſelfe ſorrow & griefe eternall: and leaſt in the daie of Gods wrath, he feele him to be a iuſt reuenger, who hath ſaid. To me vengeance & I wil recompence, when the Kings & Princes of the earth ſhal weepe & lamẽt at the ſight of the Sonne of man, for the terror of his iudgemẽts, from which neither gold nor ſiluer can deliuer them. Who will not be affraid of that feareful trial, where the Lord himſelfe ſhall be accuſer, aduocate and iudge? from whoſe

whoſe ſentẽce none cã appeale. For the Father hath giuẽ al iudgemẽt to the ſon, who ſhutteth & no mã openeth, & openeth & no man ſhutteth. O ſtrict & ſeuere iudgment wherin mẽ ſhal giue account not onely of their actions; but of euery idle word that they haue ſpoken! who ſhall eſcape from that anger to come? When the Sonne of man ſhal ſend his Angels, which ſhal gather out of Gods kingdom euerie ſcandal, & thoſe that doe iniquitie, & of them ſhall make faggots to burne and caſt them into the furnace of fire, where there ſhall be weeping and gnaſhing of teeth. Without queſtion God is a Iealous God, and whoſoeuer taketh his Couenant, his oathe, his name in vaine, hee ſhall ſmart, for it he ſhall ſmart. Now therefore ſaith *Canutus* in the conclusion of his Lawes; I beſeech all men in generall, and commaund euerie man in particular in the name of the immortall God that ſincerely, & withall their hearts they turne to God, and withall care and diligence, ſearch what is to be done, and what it is to bee auoided (as it is a thing moſt conueniẽt for our ſaluation) that we loue God & keepe his commaundements, & giue diligent heed to the words of his meſſengers. For they ſhall produce vs before his ſight in the day, wherein the Lord ſhall come to iudge euery man according to his workes. Then happie ſhall that keeper bee, that ſhall bring *Lamb. Arc.*

B. the flocke committed vnto him into the ioyes of heauen, by the paines that he hath take vpon earth, And blessed shall bee the flocke that followed such a shephard which hath pulled the from the pawes of the Deuill, and commended them as a purchase vnto God. Therefore let vs all in concord and vnitie studdie to please God, and fly from the fearefull torments of his wrath, & iudgement. Let the Preachers and Ministers of Gods word (as it is their charge and needefull to all mens saluation) oftentimes preach the glory & ioyes of Gods kingdome, and let all men with diligent, serious, and attentiue eares and mindes, heare and obserue them: yea let them beare the commaundements of God alwaies imprinted and infixed in their hearts. To conclude euerie man for the greater aduauncement of the diuine glorie, both in word and deed, Godly and cheerefully apply himselfe to doe well, by what meanes soeuer they may. So at length in the end we all aboundantly shall obtaine his gracious mercy. Blessed be the name of the Lord, & to him bee honor, praise, and glorie, from this time foorth for euermore.

Deus non deseret.

C 21635 51
62420

REPRODUCED FROM THE COPY IN THE

HENRY E. HUNTINGTON LIBRARY

FOR REFERENCE ONLY. NOT FOR REPRODUCTION